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on the Elimination
of all Forms of
Racial Discrimination

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1162nd MEETING

PRI

Held at the Palais des Nations, Geneva,
on Thursday, 8 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.96-17727 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Tenth to fourteenth periodic reports of India (CERD/C/299/Add.3) (continued)

1. At the invitation of the Chairman, Mr. Rao, Mr. Singh and Mr. Venu (India) resumed their places at the Committee table.

2. Mr. GARVALOV said that he understood that States parties often found it difficult to comply with article 9 (1) of the Convention and the reporting requirements therein, but accession to the Convention meant that every article should be respected as far as possible and India should make every effort to report to the Committee on time.

3. Chapter I of the report provided useful information on how India interpreted "race" and its interrelationship with Indian society. It was commendable that "positive discrimination" measures had been incorporated into the Constitution of India, as mentioned in paragraph 6, inter alia, to promote the access of Scheduled Castes and Scheduled Tribes to the mainstream of national life. However, the fundamental problems of the caste system remained. Indian society comprised ethnically different groups, and the argument that the main distinctions were based on language, caste, religion or regional characteristics rather than race was unacceptable.

4. Was it true that the Government was taking a new stance with regard to problems of different population groups by establishing a National Commission for Scheduled Castes and Scheduled Tribes, a National Commission on Minorities and a National Human Rights Commission?

5. It was encouraging to note that no organization promoting or inciting racial discrimination could exist legally in India and that the Constitution and laws made it clear that the State would take action to prevent activities and propaganda that incited racial discrimination. However, were there actual cases in which organizations had fallen foul of the law and been banned?

6. Paragraph 28 mentioned the rights of all citizens to take part in public affairs and Government, and eligibility for inclusion on the electoral roll. However, it did not specify whether those rights extended to the untouchables. Despite the educational measures aimed at integrating the untouchables referred to in the delegation's oral presentation, it was still difficult to rectify a situation that was so deeply entrenched in society. Their integration should be an open process and they should be consulted as to whether they felt their rights under article 325 of the Constitution and their other human rights were being protected.

7. Further information was also needed on various specific situations, such as that in Kodiankulam, and on whether autonomy had been granted there. What steps had been taken in response to the claim of indigenous peoples in Bihar and Orissa that they had been relegated to unskilled mining jobs and displaced by development projects and what did the Government of India intend to do regarding the development of Jharkand State?

8. Mr. DIACONU said that he welcomed the statement that there was felt to be no division among races in India. However, the heterogeneity of the Indian population could not be discounted and further information on the National Commission for Scheduled Castes and Scheduled Tribes, the National Commission on Minorities and a National Human Rights Commission would be welcome.

9. Paragraph 15 dealt with the prohibition of discrimination by the State and the right of citizens to have access to the public places listed. However, it did not explain whether discrimination on the part of individuals or associations in areas such as employment was similarly prohibited.

10. The reference in paragraph 24 to the prohibition of organizations which promoted or incited racial discrimination did not give details of the specific provisions in that area or indicate whether such organizations were directly or indirectly prohibited.

11. The provisions described in paragraph 28 governing political rights and the efforts to ensure that all citizens enjoyed them were to be applauded, particularly in a country the size of India. However, he would like to know what the status of the Convention was in domestic law in India, particularly in the event of conflict between the two. Could the Convention be invoked directly before the courts?

12. The Committee often stressed the importance of education, particularly in a child's mother tongue, in the elimination of racial discrimination. Was there such education in India and, if so, to what levels? Could the delegation provide a breakdown of school attendance rates according to ethnic group?

13. He agreed with Mr. Garvalov that consideration should be given to whether certain religious differences amounted to ethnic differences. Was religion an essential element of different ethnic identities? Did the delegation see linguistic differences as a sign of cultural and ethnic differences? Finally, an explanation was needed as to the extent to which preferences or exclusion in Indian society were based on people's backgrounds.

14. Mr. van BOVEN said that chapter I of the report on general policies and overall legal framework gave the strong impression that India believed that people of different castes and tribes did not fall within the scope of the Convention, particularly where it said that "categorical distinctions of 'race' or 'national or ethnic origin' have ceased to exist". Similarly, the report stated that "the policies of the Indian Government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of article 1 of the Convention". The Committee's conceptions of "race" and "descent" clearly differed from those of the Government of India.

15. The ninth periodic report of India (CERD/C/149/Add.11) had provided information on the development and protection of Scheduled Castes and had therefore clearly recognized that the Convention was applicable to the situation in India. In the tenth to fourteenth periodic reports however, it was stated that information on matters dealt with in article 1 of the Convention would be provided only as "a matter of courtesy". It should be

recalled that, when the Convention had been drafted, the delegation of India at that time had made a valuable contribution to the same article 1, particularly subsection 4 which advocated affirmative action, and article 2 (2), which was along the same lines. There seemed to be some discrepancy between that historical contribution and the attitude that was being taken in the report.

16. More information was needed on India's implementation of article 4 of the Convention. As to the application of article 6 of the Convention, it seemed that additional measures were needed if full compliance was to be ensured, in so far as it was left merely to the courts to decide whether a person should be entitled to reparation or compensation for the violation of his or her human rights.

17. He asked the delegation to explain India's position on article 14 of the Convention regarding communications from individuals to the Committee. Clarification was also needed of the aims and purposes of the national institutions mentioned in paragraph 12 and as to whether they played a role in the dissemination of the text of the Convention or the report to the Committee and the Committee's ensuing concluding observations.

18. He invited comments on reports of raids on and violence targeted at untouchables and their villages. The general picture that emerged was that the perpetrators of such attacks were going unpunished and that neither the victims nor their families were being compensated. The Indian authorities had a duty, under more than one provision of the Convention, to prevent such incidents and, where they did occur, to punish the guilty parties.

19. The CHAIRMAN, speaking as a member of the Committee, said that the definition of "race" had evolved over the centuries. The meaning used in the Convention clearly differed from India's concept of the term.

20. In its periodic reports, the Government should provide social indicators which showed progress towards meeting its goals. In that way, the Committee could monitor the situation in India, as it did in other countries.

21. With regard to articles 4 and 6 of the Convention, States were obliged to ensure effective remedies against acts of racial discrimination or racist propaganda. The report did not go into great detail in that regard, an omission that should be rectified.

22. Mr. CHIGOVERA fully endorsed the main point made by Mr. van Boven. The second and third sentences of paragraph 7 of the report appeared to be contradictory, and the fact that castes and tribes were based on descent brought them strictly within the Convention, under the terms of article 1.

23. A report to the Committee by the South Asia Human Rights Documentation Centre dated 27 July 1996, stated that untouchability was a system in which people were segregated on the basis of colour and that the tradition of untouchability sanctioned widespread discrimination and human rights abuses. There was therefore no doubt as to whether the caste of untouchables fell within the purview of the Convention.

24. As far as article 4 of the Convention was concerned, the report might usefully have included at least the statistics of cases reported or dealt with by the Indian authorities in their campaign against injustices caused by untouchability. Information on the effectiveness of legislation on the abolition of untouchability and the protection of civil rights, which had created various new offences, would greatly assist the Committee in assessing the success of that campaign.

25. With regard to article 5 of the Convention, and with particular reference to paragraph 30 of the report, he asked for clarification on the other economic, social and cultural rights provided for under the Convention which fell within the ambit of the Directive Principles of State Policy of the Indian Constitution. Also, did that directive have the force of law and was it enforceable?

26. Mr. ABOUL-NASR said that, while the report gave a good description of the situation of the problems and achievements in India, a certain amount of information was lacking.

27. The statement in paragraph 7 of the report that certain castes and tribes did not come within the purview of the Convention was unacceptable; it was obvious to the members of the Committee without referring to dictionaries, history or the interpretation of the Convention in article 22 that the castes and tribes in question were the subject of racial discrimination and came within the purview of the Convention. In that connection he wondered who defined caste and race in India and on what basis.

28. It had been stated at the Committee's previous meeting that a State party's declaration under article 14 of the Convention was proof of its respect for the Convention. If that were true, it would mean that the overwhelming majority of member States did not respect the Convention, which was clearly not the case. The Committee should not put pressure on States parties to make the declaration. It was the only optional clause in the Convention and would remain so, irrespective of the views of the Committee. The concluding observations should not, therefore, refer to the previous day's statement as the opinion of the Committee.

29. Mr. SHAHI said that there was clearly a gap between legislation and practical implementation in India. The Government, through the special legislation it had enacted, had nevertheless sought to improve the status of the Scheduled Castes and Scheduled Tribes, and he expressed the hope that India's next periodic report would show that it had addressed the criticisms expressed in the report of the South Asia Human Rights Documentation Centre in respect of the shortcomings in the implementation of various articles of the Convention.

30. It was disturbing that, while India had taken steps towards redressing human rights issues and racial discrimination in particular and had set up such institutions as the National Commission for Scheduled Castes and Scheduled Tribes, the National Commission on Minorities and the National Human Rights Commission, those bodies had no competence to investigate human rights abuses by members of the armed forces. As a result, the populations of north-east India, the Dalits and the populations of Kashmir could be arrested,

tortured and executed by the armed forces without accountability, as had occurred for many years. The National Human Rights Commission, to be effective and credible, should therefore be given competence to address those abuses.

31. India's ninth periodic report had contained demographic information on the Scheduled Castes and Scheduled Tribes which had not appeared in the fourteenth periodic report. Also, in considering India's ninth report in 1987, the Committee had requested information on the jobs set aside in the public services for the Scheduled Castes and Scheduled Tribes and other backward classes, as provided in the Indian Constitution. Such information would be useful to the Committee in evaluating the extent of India's compliance with the Convention.

32. The question of the immunity of the security forces in carrying out arrests and exercising summary powers of life and death, which added to the terrorization and sense of deep insecurity of the Scheduled Castes and Scheduled Tribes and other similar groups, was very important. Specific cases of violations of the human rights of the untouchables and other similar segments of the population by the security forces were covered in detail in the report by the Ambedkar Centre for Justice and Peace dated 17 July 1996. It would be of great interest to the Committee if India's next report were to contain details of any judgements and decisions by the Supreme Court granting redress in such cases. Much effort was needed to educate law enforcement personnel about the Government's obligations under various human rights instruments, since most of them appeared to be totally oblivious or indifferent to those obligations.

33. In the course of the Committee's previous meeting, the case of Jammu and Kashmir had been touched upon and it had been stated that paragraph 6 of the General Recommendation XXI (48) adopted by the Committee at its 1147th meeting in March 1996 had no relevance whatsoever in that connection, and that to invoke paragraph 6 in support of the position of one of the parties was inadmissible and contrary to the principles of international law governing friendly relations among States. He endorsed that view. A declaration by the Committee could neither override nor cancel any Security Council resolutions or reinterpret the principle of friendly relations, and for the Committee to adopt such a position was unwarranted and illegal. Furthermore, the Recommendation had not been adopted unanimously in the Committee and could at best serve as internal guidelines. It was defective in its legal interpretation of General Assembly Declaration 2625 (XXV) - the second principle of which laid specific obligations on States parties in respect of the settlement of disputes - and had ignored important principles set forth in General Assembly resolution 2649 (XXV), of which preambular paragraphs 3, 5 and 6 and operative paragraphs 1, 2 and 4 were particularly relevant. The Committee should therefore reconsider General Recommendation XXI (48).

34. Mr. SINGH (India) explained that the report had been deliberately kept short because of United Nations calls for reduction in the length of documents and the wealth of information already available about India, including that provided during consideration of the previous report, and to afford scope for an extensive dialogue with the Committee. It had focused on matters relating to race as distinct from other categorizations referred to in the

Constitution. Since Committee members continued to be interested in other issues as well, the next report would be more detailed and would take account of their suggestions. He had noted the emphasis on the need for regular reporting. Comprehensive information on India's demographic composition, based on the latest census, was being provided to the Secretariat for distribution to the Committee.

35. The country rapporteur had referred to four separate concepts - race, caste, religion and community. Constitutionally, the concept of race was distinct from caste. Engaged as it was in the task of eliminating all vestiges of caste discrimination, India could not accept another distinction. To confer a racial character on the caste system would create considerable political problems which could not be the Committee's intention. In a spirit of dialogue, however, India was prepared to provide more information on matters other than race, without prejudice to its understanding of the term "race" in the Convention.

36. Turning to the caste system, which had engaged the attention of the Committee, he explained that the concept of caste in India and caste classification related exclusively to Hindus and Sikhs. It was an age-old system, which denoted a social or class distinction, and was originally occupation-oriented. With the passage of time, the system had become rigid and exploitative and had led to discrimination against those of low status in the traditional caste hierarchy. Descent was not always traceable through caste as, for instance, in the case of a change of caste through inter-caste marriage. The Indian authorities had sought to redress the injustices affecting the lower castes through constitutional provisions and laws and also through affirmative action. The conflicts which still occurred reflected the move towards greater equality as the underprivileged became more aware of their rights and sought to assert them. Neither the Government nor its authorities condoned or tolerated infringements of the law. The example cited of problems in schools was inaccurate; the problem was not one of segregation but of sufficient resources to set up enough schools. Caste-related social prejudices, it was felt, could best be tackled through education and awareness-raising. Evidence of changing power equations in society was the fact that some of the most populous States had or had had Chief Ministers belonging to Scheduled Castes or backward classes.

37. He had been surprised at the reference to a clash between Hinduism and Islam, but had been gratified to note that the country rapporteur did not consider that inevitable. He would add that any communal problems were negligible in comparison with the size of the population and that safeguards were provided in the secularism of the State and guarantees of full equality for all religions. Some conflicts were bound to arise as the old order changed and minority voices were heard in a democracy which enshrined equality in the Constitution and the laws. The poverty and illiteracy figures quoted for Indian Muslims tallied with the national figures, but all segments of the population were afflicted by poverty and illiteracy irrespective of religion, and the Government was firmly committed to poverty eradication, education, health care and employment for the entire population.

38. With regard to the concept of community, the organization of the States of the Indian Union on a linguistic basis was a conscious decision, in line

with the concept of community as a grouping in which people shared the same language and cultural traditions irrespective of their religion. It was not the complexity of Indian society that caused the delays in submitting regular reports but, since the Indian people did not define themselves in terms of race, a lack of understanding among the local authorities about what kind of information to provide. While in anthropological terms the racial origins of Indians were multiple, racial consciousness was irrelevant in the context of the social behaviour of modern-day Indians, which was why no cases of discrimination on grounds of race had come before the courts.

39. Concerning access to the courts, the unique procedure adopted by the Supreme Court for public interest litigation enabled anyone, not only the victim, to seek redress of violations, even by means of a postcard addressed to the court. A number of issues were also resolved through informal procedures such as the panchayats or village councils. Non-governmental organizations, the press and the National Human Rights Commission acted as watchdogs and brought up cases. The lok adalats were basically designed to facilitate access to quick legal remedies; they were mainly used for consumer-related problems and had not heard any cases of racial discrimination. Access to legal remedies was also being promoted through awareness-raising and education.

40. More ample information had been provided to the Human Rights Committee because it covered a vast range of human rights issues, but his authorities would willingly make its report to the Human Rights Committee, and any additional information, available to Committee members.

41. Detailed information was being provided on the functions and statutory powers of the National Human Rights Commission, which consisted of five members appointed by the President. Chairpersons of the National Commissions for the Scheduled Castes and Scheduled Tribes, Women and Minorities, or their nominees, were ex officio members. Its main functions were to inquire into complaints of violations of human rights or abetment thereof, or negligence in the prevention of any such violation by a public servant; to inquire into any complaint of violation or deprivation of rights of any individual or group of individuals relating to life, liberty and dignity resulting from terrorist acts and to make appropriate recommendations thereon; to intervene in any proceeding involving any allegation of violation of human rights pending before a court, with the approval of the court; to review the safeguards provided for under the Constitution or any law for the protection of human rights and recommend measures for their effective implementation; to study treaties and other international human rights instruments and make recommendations for their effective implementation; to undertake and promote research in the field of human rights; to spread human rights literacy and promote awareness of the safeguards available for the protection of those rights; to encourage the efforts of non-governmental organizations and institutions working in the field of human rights; and to carry out such other functions as it might consider necessary for the protection of human rights. Some concern had been expressed in the Committee about reports of crimes committed against persons held in custody. The National Human Rights Commission had directed all heads of district administrations and police authorities to report all cases of crimes in custody within 24 hours of their occurrence or of being informed of such incidents. Failure to report would

rise to the presumption that there had been an attempt to cover up the dent. Several hundred cases had been registered, reports called for by Commission had been accepted by the Government and followed up, and ecutions had ensued. The Commission had been active in promoting human ts education in schools, with the revision of textbooks and curricula, and olleges and universities, where special degree courses on human rights had introduced, and also in promoting human rights awareness and training for enforcement officers.

Information concerning administrative action being taken in conformity article 9 of the Convention was being provided along with the relevant graphic data. Regarding the implementation of the provisions of the an Penal Code concerning incitement to racial hatred, all available rmation would be collected and included in the next report.

On the subject of Anglo-Indians, their origins were such that their endants could be traced only from the male progenitors, since they were ended from male colonizers who had had offspring from Indian women. Some he special privileges granted to them by the British during colonial rule been protected for 10 years after the Constitution had come into effect, cushion the impact of the change. The only remaining privilege pertained he representation of Anglo-Indians in the National Parliament and some te Assemblies. The number of Anglo-Indians was now under 100,000.

In reply to a question about the penalization of racial discrimination, said that no case had been brought before the courts on those grounds, but any further developments would be reported. Regarding paragraph 25 of report, additional details would also be given in the next periodic ort.

Replying to a question about caste discrimination by private individuals, said that the Government's approach to such incidents included affirmative ion, vigilant monitoring by statutory bodies and awareness-raising through cation, and was supplemented by the role of non-governmental organizations, press and civil society in general. There were numerous channels and cedures for bringing complaints and seeking redress, notably through the ional Human Rights Commission, the Government being determined to ensure t the perpetrators of such acts were brought to justice in accordance with law.

Members had asked about the anti-terrorism laws in force in India, luding the Terrorist and Disruptive Activities Act (TADA) and the Armed ces Special Powers Act. Like many other democratic States, India had laws ch provided for preventive detention, but the fundamental rights of the ividual were fully protected. The Government had always granted permission prosecution of members of the security forces if it appeared that the hts of individuals had been infringed. The Armed Forces Special Powers Act s still in force in the north-east of the country, but the TADA had lapsed together.

He had been happy to hear the country rapporteur's statement that the mmittee did not seek to encourage separatism and did not wish to call into

question the territorial integrity of India. The Government's security forces had been deployed in Jammu and Kashmir to counter terrorism aimed at the civilian population. Despite the extremely difficult circumstances in which they had to operate, the security forces exercised the maximum restraint, and allegations of human rights violations were immediately investigated and, where justified, the alleged offenders prosecuted. He could give the Committee more details of terrorist acts which had been committed against innocent citizens.

48. Elections had recently been held in the six parliamentary constituencies of Jammu and Kashmir, as part of the general election throughout India. They elections had been organized by an independent election commission and monitored by the national and international media and the foreign diplomatic community. Despite intimidation by terrorist elements, the turnout in the six constituencies had ranged from 41 per cent to 83 per cent, which showed the people's faith in India's democratic institutions. He could provide more details of the election results if the Committee wished. The Government was determined to hold elections to the Jammu and Kashmir State Assembly in September 1996 and return the State to democratic government.

49. His Government had submitted detailed information about the overall human rights situation in India to the various human rights bodies: if members were interested in a specific issue, he would provide copies of India's communications, which were also filed with the Centre for Human Rights. In any case, the problems which had arisen in connection with the general issues raised by members were political in nature and had no racial, religious, caste or community basis.

50. The problem of terrorism had received worldwide attention in July 1995 with the taking of foreign hostages in Jammu and Kashmir, but the Indian people had suffered from terrorist attacks for many years. It was difficult to know how a democracy should react in such a situation: although the issue did not come within the Committee's mandate, he would welcome any advice which members had to offer. The terrorist problem in the north-eastern States of India, which had been identified with tribal and ethnic aspirations, had greatly decreased since a successful political dialogue had been established. The remaining problems, including arms and narcotics smuggling, were being resolved through a dialogue with India's neighbours. The problem of terrorism in Punjab had also been brought under control since the return of democratic government to that State. The Government was determined to protect civilians, maintain the rule of law and defend its territorial integrity against all threats.

51. It was not enough to adopt good laws for the protection of human rights: it was essential to implement them fully, which could sometimes be a problem in a developing society hampered by poverty, illiteracy and other social evils. The key to progress was education: the literacy rate had increased from 18 per cent at India's independence to 52 per cent, but much remained to be done. The Government's priorities were tackling poverty, which affected all India's people irrespective of religion, caste or creed, and the development of a social infrastructure.

52. The CHAIRMAN invited the members of the Indian delegation to continue their replies at the next meeting.

53. The Indian delegation withdrew.

Tenth, eleventh and twelfth periodic reports of Malta (CERD/C/262/Add.4) (continued)

54. At the invitation of the Chairman, Mr. Quintano (Malta) resumed his place at the Committee table.

55. Mr. QUINTANO (Malta), replying to the questions raised by members, said that section 6 of the Constitution stated that the Constitution was supreme and took precedence over any other law. Chapter 4 of the Constitution laid down the fundamental rights and freedoms of citizens and could be amended only by a two-thirds majority of the Maltese parliament. Chapter 319 of the Constitution entitled people who considered themselves victims of discrimination on any grounds to bring their case easily and cheaply before the courts. Chapter 3 of the Constitution laid down the rules about citizenship. He would provide the Centre for Human Rights with a copy of all the above provisions for consultation by members.

56. The Convention could not be directly invoked before Maltese courts. However, the Government considered that the guarantees laid down in the Convention were amply covered by the existing laws of Malta. The remedies laid down in article 6 of the Convention were provided by the Civil Court First Hall (under section 46 and also section 4 of chapter 319 of the Constitution), and the Constitutional Court (under section 93 and also section 4 of chapter 319 of the Constitution). To give some idea of the level of compensation awarded, a tourist guide had been awarded compensation equivalent to Sw F 115,150 in a case of political discrimination.

57. As for article 5 of the Convention, the right to equality before the courts was enshrined in section 45 and in section 4 and schedule 1, article 14, of chapter 319 of the Constitution. The right to security of person was enshrined in section 139 A of the Criminal Code, which dealt with torture - as far as he was aware, Malta was the only country with specific legislation prohibiting torture - and also sections 221-226 A of the Criminal Code.

58. Section 57 of the Constitution stated that citizens of Malta who were 18 years of age or over and resident in the country were entitled to participate in elections and in the conduct of public affairs. Foreign nationals were allowed to vote in local council elections on a reciprocal basis. Entry into the public service was regulated by the independent Public Service Commission and by articles 10, 11 and 14 of schedule 1 of chapter 319 of the Constitution.

59. Maltese citizens, including those who had emigrated, had the right to reside in the country and to own property there. Non-citizens were naturally more restricted, but everyone had the right to leave Malta, whatever their citizenship. The right to nationality was regulated by chapter 3 of the Constitution and by the Citizenship Act, which did not discriminate on racial

grounds. The right to marriage was regulated by articles 12 and 14 of schedule 1 of chapter 319 of the Constitution. The right to own property was enshrined in section 37 of the Constitution. The right to inherit property was enshrined in section 45 of the Constitution, which, in his opinion, contained an interpretation of the definition of discrimination superior to that in the Convention. Freedom of thought and opinion were guaranteed by articles 9 and 10 of schedule 1 of chapter 319 of the Constitution.

60. Turning to article 4 of the Convention, he said that the dissemination of ideas based on racial superiority was prohibited by chapter 71 of the Seditious Propaganda (Prohibition) Ordinance. People who abetted the dissemination of such ideas could be prosecuted under sections 42 and 43 of the Criminal Code. Organizations which promoted racial discrimination were prohibited under section 83 of the Criminal Code. Under section 45 of the Constitution public authorities were forbidden to promote or initiate racial discrimination.

61. Article 2, 1 (a) and (b) of the Convention forbade a State party to practise or support racial discrimination. Both of those practices were prohibited under section 45 of the Maltese Constitution. There were no laws which perpetuated racial discrimination in the way described in article 2, 1 (c) of the Convention. With reference to article 2, 1 (d) of the Convention, Mr. Wolfrum had asked whether private persons could be taken to court in cases where normally only the State would be liable. He had himself taken part in a case where the court had decided, on appeal, that a "parastatal body" (a non-public body in which the Government nevertheless owned a majority shareholding) was subject to prosecution on the same basis as the State itself. Another case was pending, in which a footballer had brought a case of discrimination against his football club; no one had questioned his right to bring the action. Malta saw no case for positive discrimination, as referred to in article 2, 2 of the Convention.

62. In respect of article 1 of the Convention, his only comment was that, as a lawyer, he considered that the definition of racial discrimination was not an adequate one.

63. A number of constitutional reforms were under way, which were intended to strengthen the presidency. The negotiations were deadlocked at present, but it had been decided that, if two parties were represented in Parliament, the party which had achieved the higher number of votes would have the majority of seats.

64. The Government had thought it necessary to conduct media campaigns to discourage racial discrimination despite the relatively homogeneous ethnic composition of the Maltese population, because of the increasing number of tourists, students and refugees from other countries. Malta had taken in a large number of refugees, given its small population, and they had one advocate in particular, a priest, who campaigned most actively for their rights.

65. He had noted members' comments calling upon Malta to recognize the Committee's competence to consider communications from individuals, as

provided for in article 14, paragraph 1, of the Convention. He would use his influence with the Government to try to ensure that Malta made that declaration in the near future.

66. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) thanked the Maltese representative for his answers to the Committee's questions and for the information which he had provided in writing.

67. The CHAIRMAN thanked the Maltese representative for his positive contribution to the Committee's work and said that the Committee had thus completed the first part of its consideration of Malta's tenth, eleventh and twelfth periodic reports.

The meeting rose at 1 p.m.

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4. Was it true that the Government was taking a new stance with regard to problems of different population groups by establishing a National Commissio for Scheduled Castes and Scheduled Tribes, a National Commission on Minoriti and a National Human Rights Commission?

5. It was encouraging to note that no organization promoting or inciting racial discrimination could exist legally in India and that the Constitution and laws made it clear that the State would take action to prevent activiti and propaganda that incited racial discrimination. However, were there actu cases in which organizations had fallen foul of the law and been banned?

6. Paragraph 28 mentioned the rights of all citizens to take part in publ affairs and Government, and eligibility for inclusion on the electoral roll However, it did not specify whether those rights extended to the untouchable Despite the educational measures aimed at integrating the untouchables referred to in the delegation's oral presentation, it was still difficult to rectify a situation that was so deeply entrenched in society. Their integration should be an open process and they should be consulted as to whether they felt their rights under article 325 of the Constitution and their other human rights were being protected.

7. Further information was also needed on various specific situations, su as that in Kodiankulam, and on whether autonomy had been granted there. Wh steps had been taken in response to the claim of indigenous peoples in Biha and Orissa that they had been relegated to unskilled mining jobs and displa by development projects and what did the Government of India intend to do regarding the development of Jharkand State?

8. Mr. DIACONU said that he welcomed the statement that there was felt to be no division among races in India. However, the heterogeneity of the Indian population could not be discounted and further information on the National Commission for Scheduled Castes and Scheduled Tribes, the National Commission on Minorities and a National Human Rights Commission would be welcome.

9. Paragraph 15 dealt with the prohibition of discrimination by the State and the right of citizens to have access to the public places listed. However, it did not explain whether discrimination on the part of individuals or associations in areas such as employment was similarly prohibited.

10. The reference in paragraph 24 to the prohibition of organizations which promoted or incited racial discrimination did not give details of the specific provisions in that area or indicate whether such organizations were directly or indirectly prohibited.

11. The provisions described in paragraph 28 governing political rights and the efforts to ensure that all citizens enjoyed them were to be applauded, particularly in a country the size of India. However, he would like to know what the status of the Convention was in domestic law in India, particularly in the event of conflict between the two. Could the Convention be invoked directly before the courts?

12. The Committee often stressed the importance of education, particularly in a child's mother tongue, in the elimination of racial discrimination. Was there such education in India and, if so, to what levels? Could the delegation provide a breakdown of school attendance rates according to ethnic group?

13. He agreed with Mr. Garvalov that consideration should be given to whether certain religious differences amounted to ethnic differences. Was religion an essential element of different ethnic identities? Did the delegation see linguistic differences as a sign of cultural and ethnic differences? Finally, an explanation was needed as to the extent to which preferences or exclusion in Indian society were based on people's backgrounds.

14. Mr. van BOVEN said that chapter I of the report on general policies and overall legal framework gave the strong impression that India believed that people of different castes and tribes did not fall within the scope of the Convention, particularly where it said that "categorical distinctions of 'race' or 'national or ethnic origin' have ceased to exist". Similarly, the report stated that "the policies of the Indian Government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of article 1 of the Convention". The Committee's conceptions of "race" and "descent" clearly differed from those of the Government of India.

15. The ninth periodic report of India (CERD/C/149/Add.11) had provided information on the development and protection of Scheduled Castes and had therefore clearly recognized that the Convention was applicable to the situation in India. In the tenth to fourteenth periodic reports however, it was stated that information on matters dealt with in article 1 of the Convention would be provided only as "a matter of courtesy". It should be

recalled that, when the Convention had been drafted, the delegation of India at that time had made a valuable contribution to the same article 1, particularly subsection 4 which advocated affirmative action, and article 2 (2), which was along the same lines. There seemed to be some discrepancy between that historical contribution and the attitude that was being taken in the report.

16. More information was needed on India's implementation of article 4 of the Convention. As to the application of article 6 of the Convention, it seemed that additional measures were needed if full compliance was to be ensured, in so far as it was left merely to the courts to decide whether a person should be entitled to reparation or compensation for the violation of his or her human rights.

17. He asked the delegation to explain India's position on article 14 of the Convention regarding communications from individuals to the Committee. Clarification was also needed of the aims and purposes of the national institutions mentioned in paragraph 12 and as to whether they played a role in the dissemination of the text of the Convention or the report to the Committee and the Committee's ensuing concluding observations.

18. He invited comments on reports of raids on and violence targeted at untouchables and their villages. The general picture that emerged was that the perpetrators of such attacks were going unpunished and that neither the victims nor their families were being compensated. The Indian authorities had a duty, under more than one provision of the Convention, to prevent such incidents and, where they did occur, to punish the guilty parties.

19. The CHAIRMAN, speaking as a member of the Committee, said that the definition of "race" had evolved over the centuries. The meaning used in the Convention clearly differed from India's concept of the term.

20. In its periodic reports, the Government should provide social indicators which showed progress towards meeting its goals. In that way, the Committee could monitor the situation in India, as it did in other countries.

21. With regard to articles 4 and 6 of the Convention, States were obliged to ensure effective remedies against acts of racial discrimination or racist propaganda. The report did not go into great detail in that regard, an omission that should be rectified.

22. Mr. CHIGOVERA fully endorsed the main point made by Mr. Van Boven. The second and third sentences of paragraph 7 of the report appeared to be contradictory, and the fact that castes and tribes were based on descent brought them strictly within the Convention, under the terms of article 1.

23. A report to the Committee by the South Asia Human Rights Documentation Centre dated 27 July 1996, stated that untouchability was a system in which people were segregated on the basis of colour and that the tradition of untouchability sanctioned widespread discrimination and human rights abuses. There was therefore no doubt as to whether the caste of untouchables fell within the purview of the Convention.

24. As far as article 4 of the Convention was concerned, the report might usefully have included at least the statistics of cases reported or dealt with by the Indian authorities in their campaign against injustices caused by untouchability. Information on the effectiveness of legislation on the abolition of untouchability and the protection of civil rights, which had created various new offences, would greatly assist the Committee in assessing the success of that campaign.

25. With regard to article 5 of the Convention, and with particular reference to paragraph 30 of the report, he asked for clarification on the other economic, social and cultural rights provided for under the Convention which fell within the ambit of the Directive Principles of State Policy of the Indian Constitution. Also, did that directive have the force of law and was it enforceable?

26. Mr. ABOUL-NASR said that, while the report gave a good description of the situation of the problems and achievements in India, a certain amount of information was lacking.

27. The statement in paragraph 7 of the report that certain castes and tribes did not come within the purview of the Convention was unacceptable; it was obvious to the members of the Committee without referring to dictionaries, history or the interpretation of the Convention in article 22 that the castes and tribes in question were the subject of racial discrimination and came within the purview of the Convention. In that connection he wondered who defined caste and race in India and on what basis.

28. It had been stated at the Committee's previous meeting that a State party's declaration under article 14 of the Convention was proof of its respect for the Convention. If that were true, it would mean that the overwhelming majority of member States did not respect the Convention, which was clearly not the case. The Committee should not put pressure on States parties to make the declaration. It was the only optional clause in the Convention and would remain so, irrespective of the views of the Committee. The concluding observations should not, therefore, refer to the previous day's statement as the opinion of the Committee.

29. Mr. SHAHI said that there was clearly a gap between legislation and practical implementation in India. The Government, through the special legislation it had enacted, had nevertheless sought to improve the status of the Scheduled Castes and Scheduled Tribes, and he expressed the hope that India's next periodic report would show that it had addressed the criticisms expressed in the report of the South Asia Human Rights Documentation Centre in respect of the shortcomings in the implementation of various articles of the Convention.

30. It was disturbing that, while India had taken steps towards redressing human rights issues and racial discrimination in particular and had set up such institutions as the National Commission for Scheduled Castes and Scheduled Tribes, the National Commission on Minorities and the National Human Rights Commission, those bodies had no competence to investigate human rights abuses by members of the armed forces. As a result, the populations of north-east India, the Dalits and the populations of Kashmir could be arrested,

tortured and executed by the armed forces without accountability, as had occurred for many years. The National Human Rights Commission, to be effective and credible, should therefore be given competence to address those abuses.

31. India's ninth periodic report had contained demographic information on the Scheduled Castes and Scheduled Tribes which had not appeared in the fourteenth periodic report. Also, in considering India's ninth report in 1987, the Committee had requested information on the jobs set aside in the public services for the Scheduled Castes and Scheduled Tribes and other backward classes, as provided in the Indian Constitution. Such information would be useful to the Committee in evaluating the extent of India's compliance with the Convention.

32. The question of the immunity of the security forces in carrying out arrests and exercising summary powers of life and death, which added to the terrorization and sense of deep insecurity of the Scheduled Castes and Scheduled Tribes and other similar groups, was very important. Specific cases of violations of the human rights of the untouchables and other similar segments of the population by the security forces were covered in detail in the report by the Ambedkar Centre for Justice and Peace dated 17 July 1996. It would be of great interest to the Committee if India's next report were to contain details of any judgements and decisions by the Supreme Court granting redress in such cases. Much effort was needed to educate law enforcement personnel about the Government's obligations under various human rights instruments, since most of them appeared to be totally oblivious or indifferent to those obligations.

33. In the course of the Committee's previous meeting, the case of Jammu and Kashmir had been touched upon and it had been stated that paragraph 6 of the General Recommendation XXI (48) adopted by the Committee at its 1147th meeting in March 1996 had no relevance whatsoever in that connection, and that to invoke paragraph 6 in support of the position of one of the parties was inadmissible and contrary to the principles of international law governing friendly relations among States. He endorsed that view. A declaration by the Committee could neither override nor cancel any Security Council resolutions or reinterpret the principle of friendly relations, and for the Committee to adopt such a position was unwarranted and illegal. Furthermore, the Recommendation had not been adopted unanimously in the Committee and could at best serve as internal guidelines. It was defective in its legal interpretation of General Assembly Declaration 2625 (XXV) - the second principle of which laid specific obligations on States parties in respect of the settlement of disputes - and had ignored important principles set forth in General Assembly resolution 2649 (XXV), of which preambular paragraphs 3, 5 and 6 and operative paragraphs 1, 2 and 4 were particularly relevant. The Committee should therefore reconsider General Recommendation XXI (48).

34. Mr. SINGH (India) said that he was gratified by the interest shown by members and the enlightened debate India's fourteenth report had generated. He would attempt to respond to observations made by members.

35. Responding to remarks that the fourteenth report was too succinct, he explained that the report had been kept brief as a conscious decision, bearing

in mind the frequently raised calls at the United Nations for reducing the length of documents, and the wealth of information already available about India, including that provided during consideration of the previous report, and to provide an opportunity to engage in an extensive dialogue with the Committee. The report, therefore, focused mainly on aspects related to race as distinct from other categorizations referred to in the Indian Constitution. Since Committee members continued to be interested in other issues as well, the next report would be more elaborate and would take into account their suggestions. He had noted the emphasis on the need for regular reporting.

36. Comprehensive information on India's demographic composition, based on the latest census, was being provided to the Secretariat for distribution to the Committee.

37. The Country Rapporteur had referred to four separate concepts - race, caste, religion and community. The concept of "race" in India as recognized under the Constitution was distinct from caste; separate references to the two made it clear that caste was not equated with race. Engaged as it was in the task of eliminating all vestiges of caste discrimination, India could not accept another distinction. To confer a racial character on the caste system would create considerable political problems which could not be the Committee's intention. In a spirit of dialogue, however, India was prepared to provide more information on matters other than race, without prejudice to its understanding of the term "race" in the Convention.

38. To illustrate the clear distinction between caste and race, he pointed out that the Indian representatives before the Committee belonged to separate castes, but their racial identification was the same. That would be the case even if each of them professed a different religion. As for the remark made equating Hindus with the Hindi language, he pointed out that one of his colleagues was from Kerala and therefore Malayali-speaking; and he was also a Hindu.

39. Turning to the caste system, which had engaged the attention of the Committee, he explained that the concept of caste in India and caste classification under the Constitution related exclusively to Hindus and Sikhs. It was an age-old system, which denoted a social or class distinction, and was originally occupation-oriented. With the passage of time, the system had become rigid and exploitative and had led to discrimination against those of low status in the traditional caste hierarchy. Descent was not always traceable through caste as, for instance, in the case of a change of caste through inter-caste marriage. The Indian authorities had sought to redress the injustices affecting the lower castes through constitutional provisions and laws and also through affirmative action. Social evils related to caste had not yet been entirely eradicated. The conflicts which still occurred reflected the move towards effective enjoyment of equality as the under-privileged became more aware of their legal and constitutional rights and sought to assert them. Neither the Government nor its authorities condoned or tolerated infringements of the law. The example cited of problems in schools was inaccurate; the problem was not one of segregation but of sufficient resources to set up enough schools. Caste-related social prejudices, it was felt, could best be tackled through education and

awareness-raising. Evidence of changing power equations in society was the fact that some of the most populous States had or had had Chief Ministers belonging to Scheduled Castes or backward classes.

40. He had been surprised at the reference to a clash between Hinduism and Islam, but had been gratified to note that the Country Rapporteur did not consider that inevitable. He would add that not only was that not inevitable, but also that such communal problems as might arise were negligible in comparison with the size of the population and that safeguards were provided in the secularism of the State and guarantees of full equality for all religions. Some conflicts were bound to arise as the old order changed and minority voices were heard in a democracy which enshrined equality in the Constitution and the laws. The poverty and illiteracy figures quoted for Indian Muslims tallied with the national figures. All segments of the population were afflicted by poverty and illiteracy irrespective of religion, and the Government was firmly committed to poverty eradication, education, health care and employment for the entire population.

41. With regard to the concept of community, the organization of the States of the Indian Union on a linguistic basis was a conscious decision, in line with the concept of community as a grouping in which people shared the same language and cultural traditions irrespective of their religion. It was not the complexity of Indian society that caused the delays in submitting regular reports but, since the Indian people did not define themselves in terms of race, a lack of understanding among the local authorities about what kind of information to provide.

42. Turning to other observations, he again stressed that while in anthropological terms the racial origins of Indians were multiple, racial consciousness was irrelevant in the context of the social behaviour of modern-day Indians, who sought identification on different bases, which was why no cases of discrimination on grounds of race had come up before the courts.

43. Concerning access to the courts, the unique procedure adopted by the Supreme Court for public-interest litigation enabled anyone, not only the victim, to seek redress of violations, even by means of a postcard addressed to the court. A number of issues were also resolved through informal procedures such as the panchayats or village councils. Non-governmental organizations, the press and the National Human Rights Commission acted as watchdogs and brought up cases. The lok adalats were basically designed to facilitate access to quick legal remedies; they were mainly used for consumer-related problems and had not heard any cases of racial discrimination. Access to legal remedies was also being promoted through awareness-raising and education.

44. More ample information had been provided to the Human Rights Committee because its mandate covered a vast range of human rights issues, but his authorities would willingly make the report to the Human Rights Committee, and any additional information in areas of interest to members, available to Committee members.

45. Detailed information was being provided to the Committee through the Secretariat on the functions and statutory powers of the National Human Rights Commission, which consisted of five members appointed by the President. Chairpersons of the National Commissions for the Scheduled Castes and Scheduled Tribes, Women and Minorities, or their nominees, were ex officio members. Its main functions were to inquire into complaints of violations of human rights or abetment thereof, or negligence in the prevention of any such violation by a public servant; to inquire into any complaint of violation or deprivation of rights of any individual or group of individuals relating to life, liberty and dignity resulting from terrorist acts and to make appropriate recommendations thereon; to intervene in any proceeding involving any allegation of violation of human rights pending before a court, with the approval of the court; to review the safeguards provided for under the Constitution or any law for the protection of human rights and recommend measures for their effective implementation; to study treaties and other international human rights instruments and make recommendations for their effective implementation; to undertake and promote research in the field of human rights; to spread human rights literacy and promote awareness of the safeguards available for the protection of those rights; to encourage the efforts of non-governmental organizations and institutions working in the field of human rights; and to carry out such other functions as it might consider necessary for the protection of human rights. Some concern had been expressed in the Committee about reports of crimes committed against persons held in custody. The National Human Rights Commission had directed all heads of district administrations and police authorities to report all cases of crimes in custody within 24 hours of their occurrence or of being informed of such incidents. Failure to report would give rise to the presumption that there had been an attempt to cover up the incident. Several hundred cases had been registered and investigations launched by the Commission; reports had been called for from the Government. The Commission's observations had been accepted by the Government and followed up; prosecutions had ensued. The Commission had been active in promoting human rights education in schools, with the revision of textbooks and curricula, and in colleges and universities, where special degree courses on human rights had been introduced, and also in promoting human rights awareness and training for law enforcement officers.

46. Information concerning administrative action being taken in conformity with article 9 of the Convention was being provided along with the relevant demographic data. Regarding the implementation of the provisions of the Indian Penal Code concerning incitement to racial hatred, all available information would be collected and included in the next report.

47. On the subject of Anglo-Indians, their origins were such that their descendants could be traced only from the male progenitors, since they were descended from male colonizers who had had offspring from Indian women. Some of the special privileges granted to them by the British during colonial rule had been protected for 10 years after the Constitution had come into effect, to cushion the impact of the change. The only remaining privilege pertained to the representation of Anglo-Indians in the National Parliament and some State Assemblies. The number of Anglo-Indians was now around 100,000.

48. In reply to a question about the penalization of racial discrimination, he said that no case had been brought before the courts on those grounds, but that any further developments would be reported. Regarding paragraph 25 of the report, additional details would also be given in the next periodic report.

49. Replying to a question about caste discrimination by private individuals, he said that the Government's approach to such incidents included affirmative action, vigilant monitoring by statutory bodies and awareness-raising through education, and was supplemented by the role of non-governmental organizations, the press and civil society in general. There were numerous channels and procedures for bringing complaints and seeking redress, including through the National Human Rights Commission, the Government being determined to ensure that the perpetrators of such acts were brought to justice in accordance with the law.

50. Members had asked about the anti-terrorism laws in force in India, including the Terrorist and Disruptive Activities Act (TADA) and the Armed Forces Special Powers Act. As in the case of many other democracies confronted with the phenomenon of terrorism, the normal criminal laws of the land were found to be inadequate in dealing with those exceptional circumstances. Like them, India had laws which provided for preventive detention duly enacted by Parliament; safeguards to protect the fundamental rights of the individual under the due process of law had been built into them. The Government had invariably granted permission for prosecution of members of the security forces whenever prima facie evidence existed regarding the infringement of the rights of individuals. The Armed Forces Special Powers Act was applicable in areas which might be declared disturbed because of extraordinary conditions of insurgency or terrorism; it was still applicable in the north-east of the country. TADA had lapsed altogether.

51. Reference had been made to the Indian State of Jammu and Kashmir and to elections there. He had been happy to hear from the Country Rapporteur that the Committee had adopted a categorical statement that it would do nothing to encourage separatism, and was gratified at the Rapporteur's remark that references to Jammu and Kashmir did not in any way question the territorial integrity of India.

52. The Government's security forces had been deployed in Jammu and Kashmir to counter terrorism aimed at the destruction of the civil society and committed against the civilian population. Violence and terror had no place in a democracy where ample avenues existed to voice dissent. Despite the extremely difficult circumstances in which they had to operate, the security forces exercised the maximum restraint. Allegations of human rights violations were immediately investigated, and where justified, the alleged offenders prosecuted. If the Committee was interested, he could provide more details of terrorist acts which had been committed against innocent citizens.

53. Elections had recently been held in the six parliamentary constituencies of Jammu and Kashmir, as part of the general elections throughout India. Like in the rest of the country, those elections had been manifestly free and fair. They had been organized by the Election Commission, an independent constitutional entity, in full public gaze, with representatives of the

national and international media as well as foreign diplomats enjoying free access. Despite efforts to disrupt those elections through threats of violence and intimidation by terrorist elements, all segments of the population of Jammu and Kashmir had participated with enthusiasm, and the turnout in the six parliamentary constituencies had ranged from 41 to 83 per cent. That reflected the desire of the people of that Indian State for an end to violence, their rejection of the gun culture and their faith in India's democratic institutions. Any intimidation that might have occurred was only on the part of those terrorist and militant elements who had sought to deny citizens their democratic rights of exercising their franchise. Full details of the election results were being provided to the Committee. The Government was determined to hold elections to the Jammu and Kashmir State Assembly in September 1996 and return the State to democratic government.

54. His Government had submitted detailed information about the overall human rights situation in India to the various human rights mechanisms in accordance with their mandates; if members were interested in a specific issue, he would provide copies of India's communications, which were also available with the Centre for Human Rights. At the same time, he underlined the fact that the problems related to general issues raised by members were political in nature and had no racial, religious, caste or community basis.

55. He wished to inform members regarding problems with terrorism faced by India. Recent incidents of terrorism had captured the attention of the entire world community. The taking of foreign hostages in Jammu and Kashmir in July 1995 had brought to light the problems faced by India, whose people had endured enormous suffering from terrorist attacks for the past several years. The question was, when its citizens were ruthlessly killed or bombed, how should a nation react? Countering terrorism was specially difficult for a democracy which must at all times uphold the rule of law. Although the issue did not come within the Committee's mandate, he would welcome any advice that members had to offer on how best to counter that phenomenon. Pluralistic, democratic and secular societies such as that of India were particularly vulnerable to the forces of political extremism which manifested themselves through violence and terrorism. The terrorist problem in the north-eastern States of India, which had been identified with tribal and ethnic aspirations, had greatly decreased since a successful political dialogue had been established. The remaining problems, including arms and narcotics smuggling, were being resolved through a dialogue with India's neighbours. The problem of terrorism in Punjab had also been brought under control since the return of democratic government to that State. In Jammu and Kashmir the Government's primary obligation was to protect innocent civilians, maintain the rule of law and provide for elections to restore democratic governance. He wished to state categorically that, while respecting and upholding the commitment of India's democracy to the rule of law, his Government would not flinch from carrying out those responsibilities. It would also defend India's territorial integrity against all threats.

56. In concluding, he stated that it was not enough to adopt good laws for the protection of human rights; it was essential to implement them fully, which could sometimes be a problem in a developing society hampered by poverty and illiteracy. Furthermore, problems related to the symptoms of poverty and social evils could only be confronted with the active involvement of civil

society down to the grass-roots level. There was consensus at the highest levels of his Government that all forms of prejudice had to be dealt with and would not be tolerated or sanctioned by the State. India had faced the monumental task of transforming an ancient society into a modern one in 50 years. Stress was being placed on education in the belief that a literate people would not allow themselves to be exploited on any grounds. The literacy rate had risen from 18 per cent at independence to 52 per cent, but much more remained to be done. The problem of poverty was also being tackled comprehensively, as it afflicted all segments of society irrespective of religion, caste or creed. The major focus of economic reforms was hence on social infrastructure development.

57. The CHAIRMAN invited the members of the Indian delegation to continue their replies at the next meeting.

58. The Indian delegation withdrew.

Tenth, eleventh and twelfth periodic reports of Malta (CERD/C/262/Add.4) (continued)

59. At the invitation of the Chairman, Mr. Quintano (Malta) resumed his place at the Committee table.

60. Mr. QUINTANO (Malta), replying to the questions raised by members, said that section 6 of the Constitution stated that the Constitution was supreme and took precedence over any other law. Chapter 4 of the Constitution laid down the fundamental rights and freedoms of citizens and could be amended only by a two-thirds majority of the Maltese parliament. Chapter 319 of the Constitution entitled people who considered themselves victims of discrimination on any grounds to bring their case easily and cheaply before the courts. Chapter 3 of the Constitution laid down the rules about citizenship. He would provide the Centre for Human Rights with a copy of all the above provisions for consultation by members.

61. The Convention could not be directly invoked before Maltese courts. However, the Government considered that the guarantees laid down in the Convention were amply covered by the existing laws of Malta. The remedies laid down in article 6 of the Convention were provided by the Civil Court First Hall (under section 46 and also section 4 of chapter 319 of the Constitution), and the Constitutional Court (under section 93 and also section 4 of chapter 319 of the Constitution). To give some idea of the level of compensation awarded, a tourist guide had been awarded compensation equivalent to Sw F 115,150 in a case of political discrimination.

62. As for article 5 of the Convention, the right to equality before the courts was enshrined in section 45 and in section 4 and schedule 1, article 14, of chapter 319 of the Constitution. The right to security of person was enshrined in section 139 A of the Criminal Code, which dealt with torture - as far as he was aware, Malta was the only country with specific legislation prohibiting torture - and also sections 221-226 A of the Criminal Code.

63. Section 57 of the Constitution stated that citizens of Malta who were 18 years of age or over and resident in the country were entitled to participate in elections and in the conduct of public affairs. Foreign nationals were allowed to vote in local council elections on a reciprocal basis. Entry into the public service was regulated by the independent Public Service Commission and by articles 10, 11 and 14 of schedule 1 of chapter 319 of the Constitution.

64. Maltese citizens, including those who had emigrated, had the right to reside in the country and to own property there. Non-citizens were naturally more restricted, but everyone had the right to leave Malta, whatever their citizenship. The right to nationality was regulated by chapter 3 of the Constitution and by the Citizenship Act, which did not discriminate on racial grounds. The right to marriage was regulated by articles 12 and 14 of schedule 1 of chapter 319 of the Constitution. The right to own property was enshrined in section 37 of the Constitution. The right to inherit property was enshrined in section 45 of the Constitution, which, in his opinion, contained an interpretation of the definition of discrimination superior to that in the Convention. Freedom of thought and opinion were guaranteed by articles 9 and 10 of schedule 1 of chapter 319 of the Constitution.

65. Turning to article 4 of the Convention, he said that the dissemination of ideas based on racial superiority was prohibited by chapter 71 of the Seditious Propaganda (Prohibition) Ordinance. People who abetted the dissemination of such ideas could be prosecuted under sections 42 and 43 of the Criminal Code. Organizations which promoted racial discrimination were prohibited under section 83 of the Criminal Code. Under section 45 of the Constitution public authorities were forbidden to promote or initiate racial discrimination.

66. Article 2, 1 (a) and (b) of the Convention forbade a State party to practise or support racial discrimination. Both of those practices were prohibited under section 45 of the Maltese Constitution. There were no laws which perpetuated racial discrimination in the way described in article 2, 1 (c) of the Convention. With reference to article 2, 1 (d) of the Convention, Mr. Wolfrum had asked whether private persons could be taken to court in cases where normally only the State would be liable. He had himself taken part in a case where the court had decided, on appeal, that a "parastatal body" (a non-public body in which the Government nevertheless owned a majority shareholding) was subject to prosecution on the same basis as the State itself. Another case was pending, in which a footballer had brought a case of discrimination against his football club; no one had questioned his right to bring the action. Malta saw no case for positive discrimination, as referred to in article 2, 2 of the Convention.

67. In respect of article 1 of the Convention, his only comment was that, as a lawyer, he considered that the definition of racial discrimination was not an adequate one.

68. A number of constitutional reforms were under way, which were intended to strengthen the presidency. The negotiations were deadlocked at present, but it had been decided that, if two parties were represented in Parliament, the party which had achieved the higher number of votes would have the majority of seats.

69. The Government had thought it necessary to conduct media campaigns to discourage racial discrimination despite the relatively homogeneous ethnic composition of the Maltese population, because of the increasing number of tourists, students and refugees from other countries. Malta had taken in a large number of refugees, given its small population, and they had one advocate in particular, a priest, who campaigned most actively for their rights.

70. He had noted members' comments calling upon Malta to recognize the Committee's competence to consider communications from individuals, as provided for in article 14, paragraph 1, of the Convention. He would use his influence with the Government to try to ensure that Malta made that declaration in the near future.

71. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) thanked the Maltese representative for his answers to the Committee's questions and for the information which he had provided in writing.

72. The CHAIRMAN thanked the Maltese representative for his positive contribution to the Committee's work and said that the Committee had thus completed the first part of its consideration of Malta's tenth, eleventh and twelfth periodic reports.

The meeting rose at 1 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1163rd MEETING

Held at the Palais des Nations, Geneva
on Thursday, 8 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Tenth to fourteenth periodic reports of India (CERD/C/299/Add.3) (continued)

1. At the invitation of the Chairman, the delegation of India took places at the Committee table.

2. Mr. RAO (India), replying to the questions posed by the members of the Committee, said that the purpose of the Convention was to eliminate racial discrimination, as opposed to religious prejudice. The Indian people had been victims of racial discrimination both abroad and in India itself, during the long dark period of colonialism, which was why the Constitution of India specifically prohibited discrimination on the basis of "race" (para. 8 of the report (CERD/C/299/Add.3)).

3. The notion of "race" was not entirely foreign to that of "caste"; but according to experts on such questions, racial differences were secondary compared to cultural ones (economic and occupational status, language and dynastic or national loyalties), and the principle of race had never really been determinant for caste. Article 14 of the Constitution guaranteed everyone equality before the law and the equal protection of the law, but on no account did it prohibit introducing a reasonable classification in order to achieve objectives contained in the Constitution itself or in legislation and adopted by India for social purposes. Pursuant to that provision, special protection had been prescribed for "Scheduled Castes and Tribes" (para. 6). It was up to the President of India to decide which castes and tribes must be placed on special lists, and only those which, at a given time, appeared on that list enjoyed such protection.

4. One question had addressed the criteria according to which the Scheduled Castes and Tribes were defined. Past criteria (British act of 1935) were of no current practical significance, the sole applicable principle, in accordance with article 15 of the Constitution, now being the social and economic backwardness of a given group. That might differ from one State to another, from one period to another or from one community or another of the same caste, religion or tribe. The lists must also be amended in the light of the social mobility of those concerned, which clearly showed that they were not governed by the criterion of race. It was with a view to overcoming unjust social treatment that special protection had been established for the poorest and most underprivileged groups. The commitment to abolish the scourge of untouchability, as well as the enormous effort made in recent years to extend the benefits of social welfare to the greatest possible number of underprivileged groups, must be situated in that same context.

5. Minorities also received special protection. Currently, the Commission on Minorities dealt only with religious minorities which had been identified as such: Christians, Buddhists, Parsees, Muslims and Sikhs.

6. Another question had focused on the extent to which the underprivileged classes enjoyed the benefits set forth in the Constitution and various legislative and administrative provisions in India. As already pointed out,

there were many such classes, and India sought to make available to them maximum resources for their economic development and modernization effort. In a country of India's size, the very application of law posed formidable difficulties, but despite mistakes, definite progress had been made.

7. The provision of article 197 of the Code of Civil Procedure, which exempted representatives of the armed forces from all responsibility for acts committed in good faith in the performance of their duties, was not unique to India and could be found in many countries. Needless to say, the acts in question must not have been committed with malicious intent.

8. The Convention was fully applicable in India and could be invoked in the courts. That had never occurred, but the Supreme Court had repeatedly cited human rights conventions as the basis of its decisions in cases in which no specific domestic legislation had been directly applicable. Only in the event of a conflict between the Convention and a mandatory domestic provision might the question of the Convention's application arise. But that was unlikely to happen.

9. Mr. YUTZIS said that, perhaps owing to the methodological approach chosen, India's report did not enable the Committee to obtain an overall view of how the Convention was applied. As he saw it, there seemed to be no doubt that the notion of "caste" gave rise to discrimination. The question was what form such discrimination took. In paragraph 7 of the report, it was stated that the term "descent" in the Convention referred to "race" and therefore was not applicable to Scheduled Castes and Tribes, which were unique to Indian society. But many historical studies had shown that at one time in Indian history, there had been distinct groups which had gradually been integrated into the nation and subsequently had no longer wanted to be regarded as different. Today they constituted minorities, which was also an ambiguous term. The fact that pejorative words were employed when speaking of certain groups, as could be seen from the information available to him, suggested that the distinction was not only of a social, but also of a socio-ethnic nature, based on the special characteristics of those groups. He was therefore not entirely convinced, quite the contrary, that the question of Scheduled Castes and Tribes did not come under the purview of article 1 of the Convention (para. 7 of the report). He would like, through the delegation, to make a proposal to India, namely, that it should invite the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and intolerance to visit India and draft a report. The Committee would then have the necessary information for further developing its consideration of the situation in that country.

10. Mr. SHAHI asked the delegation of India how many members of the Indian armed forces had been found guilty of violence and how they had been punished. Also, the delegation of India had stated, at the 1162nd meeting of the Committee, that the elections to the lower chamber (Lok Sabha) in Kashmir had been free and had been held in the presence of international observers. He could provide the delegation and the Committee with articles published in the most reputable newspapers in the United Kingdom and the United States indicating that the elections had been nothing more than a parody of the democratic process and that voters had been taken to the polling stations at

gunpoint. There must be no repetition of such elections; otherwise, there would no longer be any hope of a dialogue between India and Pakistan on Kashmir.

11. Mr. RECHETOV (Country Rapporteur) said that the exchange of views between the Committee and the delegation of India, although enriching, was often too abstract, perhaps because the report had not provided a sufficient basis for discussion. The Committee had not received all the information that it had requested during consideration of the previous report. The delegation of India had stated that race had never been invoked before the Indian courts as a ground for a discrimination complaint (para. 10 of the report); what other grounds had been cited? It was to be hoped that the Committee's questions and recommendations would be analysed in depth so that the next report of India would contain the information needed for a more concrete and comprehensive assessment. The Committee had the right to be informed as to how the Convention was applied in India, as in every State party.

12. The CHAIRMAN said that the Committee had thus completed consideration of the report of India.

13. The delegation of India withdrew.

Fifth to seventh periodic reports of China (CERD/C/275/Add.2; HRI/CORE/Add.21)

14. At the invitation of the Chairman, the delegation of China took places at the Committee table.

15. Mr. WU Jianmin (China) said that his country had sought to present the report in accordance with the Committee's general guidelines on the form and content of reports. Account had also been taken of the comments made by the Committee during consideration of the previous report, notably on the need to present more facts and statistics. Various bodies and experts on ethnic questions had been consulted and missions sent to regions in which minorities lived to verify how the Convention was being implemented there. All that showed how seriously the Government of China took its international obligations under the Convention.

16. China had 56 nationalities which lived in harmony and whose equality and unity were guaranteed by the Constitution. He drew attention to the administrative distribution of the national minorities (para. 5 of the seventh periodic report of the People's Republic of China (CERD/C/275/Add.2)) and the measures taken by the State on their behalf (paras. 17, 22 and 28). To promote their socio-economic development, his Government had also authorized the five autonomous regions to set up a local legal framework tailored to their situation. The interests of minorities had also been taken into consideration in a number of laws recently adopted in the areas of natural resources, the protection of women, adoption and trade.

17. Concerning the implementation of the provisions applicable to national minorities, it must be borne in mind that prior to 1949, national minorities in China had been very isolated and underdeveloped. Since the founding of the People's Republic of China, and in particular since the adoption of the reform policy in the late 1970s, regions in which minorities lived had achieved considerable progress, but admittedly they were less well-adapted to the

market economy than the coastal regions. Thus, national minorities today were essentially concerned about overcoming poverty. The eighth five-year plan, begun in 1991, had favoured the development of regions in which national minorities lived and the western part of China in general. Central government subsidies to the five autonomous regions and three provinces (Yunnan, Guizhou and Qinghai), as well as for the Development Assistance Fund for Underdeveloped Areas (para. 19) had been increased considerably, and tax relief and low-interest loans had also been granted. Medium- and large-scale investment projects had been promoted, in particular for infrastructure. Regions in which minorities lived also received special material and financial assistance at local level, and financial, economic and technological cooperation with the developed regions was encouraged.

18. During the period covered by the eighth five-year plan (1991-1995), economic growth had been very strong throughout China, particularly in areas with minority populations. According to the main economic indicators (GNP, industrial output, salaries, income of farmers and overall economic growth rate), the rate of increase in those regions had been greater than the national average. In certain regions (Guangxi, Zhuang, Xinjiang Uighur and Tibet), the figures had been downright spectacular. Remarkable results had been achieved in agricultural production in regions in which minorities lived, especially in Mongolia and Tibet. Industrial production in those regions had also registered strong growth during that period.

19. For the Government of China, the education of minorities was a matter of high priority, and legislation, administrative regulations and investment in that area had resulted in enormous progress. In 1994, Tibet had already had 793,000 primary schools, 11,000 secondary schools and 105 institutions of higher education. There had been 16,140,000 minority students, or 16.3 times as many as in 1951. The minorities had their own media, and the 21 minority languages had been standardized to improve education.

20. The educational situation in the Tibet Autonomous Region needed to be explained in detail. In the past, only the aristocracy had had access to education, and the illiteracy rate had stood as high as 95 per cent. Thanks to the measures taken in the past 40 years by the Government of China, spectacular progress had been made, and in 1993, school enrolment at all levels in Tibet had been only slightly lower than in the rest of the country. Nevertheless, as far as primary education was concerned, the region had remained relatively underdeveloped because of its natural characteristics and isolation. Since 1993, special efforts had therefore been made to enable Tibetan children to obtain primary school education in Tibet more easily and to facilitate their enrolment in schools in other provinces and municipalities. As to the use of the Tibetan language, in 1988 a Steering Committee on Language Work had been created. All official documents were now published in Tibetan and Chinese. Tibetan was the first language used in education, and Mandarin Chinese the second. The minority language could be used in entrance examinations for higher education. Most textbooks had been translated into Tibetan.

21. The situation of education in the other autonomous regions was set out in paragraphs 78 to 88 of the report.

22. As to population policy, the State had applied to the ethnic minorities a different policy from that followed for the Han. According to the 1990 national census, the Tibet Autonomous Region had had 2,196,000 inhabitants, of whom 2,096,000 were of Tibetan and 80,800 of Han nationality, or 95.45 per cent and 3.7 per cent of the total, respectively. According to a census conducted in 1995, the population had grown to 2,398,000, 96.38 per cent of whom were Tibetan and 3.3 per cent Han. The population growth rate in the region was 16.1 per thousand, or 5.5 per thousand higher than the national average. Between 1991 and 1995, the total population of the Xinjiang Uighur Autonomous Region had grown from 15,156,800 to 16,613,500, with the Han increasing from 5,695,400 to 6,301,900 and the national minorities from 9,461,400 to 10,311,600.

23. The traditional cultures and customs of all nationalities were respected and freedom of religion and belief protected by law. Many religious edifices and monasteries had been maintained or repaired thanks to state assistance, in particular in Tibet and in the province of Qinghai. The recent incidents instigated by a handful of individuals in collusion with hostile outside elements, under the guise of ethnic and religious issues, had been strongly condemned by virtually all members of national minorities.

24. Despite those good results, the country was still developing, and pockets of poverty persisted. Minorities in particular, and virtually the entire poor population, often lived in areas in which harsh natural conditions were hardly conducive to building the infrastructure needed for a satisfactory transport system; education, and primary education in particular, left much to be desired, and on the whole, the mid-west regions were still not as developed as those along the eastern coast. With the ninth five-year plan, adopted in March 1996, it was expected that the gaps would gradually be bridged, especially as the measures to fight poverty would focus primarily on poor areas where national minorities lived.

25. In conclusion, he stressed that the history and culture of China had been the work of all nationalities living in harmony, protected by a Constitution which had done away with discriminatory and humiliating practices directed against minorities. At international level as well, China participated in all aspects of the United Nations fight against racial discrimination. Aware that efforts still had to be made, it hoped to benefit from its exchanges and cooperation with the Committee so as to continue to move ahead. The last three reports of China had been submitted at the end of the eighth five-year plan in order to give a more comprehensive picture of the progress made during that period and of the leeway to be made up, and also to help the United Nations to curb spending in its current difficult financial situation.

26. Mr. WOLFRUM (Country Rapporteur) welcomed the fact that the representative of China had adopted a tone of dialogue and thanked him for his oral presentation. However, given the abundance of information, and in particular of statistics, he wondered whether that presentation might be distributed to members in written form.

27. Having found the demographic data in the report a bit scanty, he had looked into the figures himself and had arrived at virtually the same results as those given orally. However, comparing the figures of the 1990 and 1992

censuses, he had found that population growth had varied considerably among minorities and that even taking into account the fact that the policy of limiting the number of children was not applied strictly to minorities, certain figures had been very high, for example the 138 per cent increase in the Manchu population.

28. China's definition of minority and that of the Committee were very close, i.e. a group of persons of the same origin living in the same area, speaking the same language and conscious of their group identity. After noting that the 8 per cent of the population which constituted the minorities lived on 60 per cent of the national territory, primarily in the north-east, the south-west and along the borders, he said that in his statement he would follow the order of the oral presentation.

29. Concerning government policy, he would focus chiefly on the period following the year 1980 and the adoption of the 1982 Constitution, which gave considerable attention to national minorities, as could be seen in paragraph 17 of the report.

30. Paragraphs 10 to 17 of the report discussed at length the laws and regulations, the point being to show that minorities received "attention and care", as stated in paragraph 18. Notwithstanding the large number of such texts, they did not go very far, and despite additional information provided on yet further texts, it was difficult to gain an idea of the actual situation, especially as a law as written and its actual implementation were two different things.

31. Since October 1995, the autonomous regions had promulgated a whole series of laws relating to some 15 aspects of the life of the individual and society, from marriage to the management of land, education, the protection of minors and financial assistance to farmers. All that was encouraging, but what impact did those provisions have on the daily life of the populations?

32. The 1984 Constitution was of great importance, because it enshrined equality among citizens, provided for mutual assistance between Chinese nationalities and prohibited discrimination on the basis of nationality. Article VI of the Constitution was devoted entirely to national autonomous regions. In order better to assess the impact of the Constitution, it was indispensable for the Committee to know what its status was in the Chinese legal system, whether it was a binding norm or a programme and whether it could be invoked directly.

33. Following along the lines of the Constitution, the regional autonomy for nationalities law was a promising step forward. It remained to be seen how autonomous those autonomous regions, prefectures and counties were, given that they had to have the authorization of the Standing Committee of the People's Congress in order to implement their administrative regulations, and were often very dependent financially on the central power. As he saw it, such autonomy was very limited. There was also the question of the links between the administration, whose structure had been described in detail, and the Party, a parallel structure on which the report had little to say. Given the role of the Party throughout the People's Republic of China and its importance

in training cadres, it would be useful for the Committee to find out more about its organization and its relations with the administrative structures of the country.

34. As described in the written report and the oral presentation, the regional autonomy for nationalities law was an excellent initiative. However, it would need to be explained what its concrete results had been. He asked the representative of China whether, in conformity with article 36 of that law, the educational syllabus, for example in Tibet, differed from that of other regions. It was not enough to maintain that an effort was being made to tailor education to the needs of minorities, it also had to be demonstrated, notably by indicating whether minorities learned their own history in addition to that of the Han. In its report to the Committee on the Rights of the Child, China had admitted that school attendance, the quality of education and bilingual education were far from satisfactory. Perhaps Mr. Wu Jianmin could indicate what was being done to remedy that state of affairs. He would also like to have confirmation of the assertion made in his oral presentation that it was possible to take an entrance examination for higher education in one's mother tongue.

35. Those remarks on education led him to ask how it was possible that after more than 10 years, texts for implementing the 1984 autonomy law had not all been passed, that autonomy had thus not been acquired and that the situation of dispersed ethnic minorities was still unclear. He would like to know the reason for that delay and what legislation was being applied in the interim to the populations concerned.

36. It was regrettable that the implementation of article 4 of the Convention was not described exhaustively in the report or the oral presentation; that situation must be remedied. The economic situation of minorities, for its part, gave cause for concern in many respects, as the Government of China itself admitted. China might not only provide in its next report figures on investment to assist those groups but also indicate exactly for what such sums were earmarked. It was important to know whether they went for education and public health, armaments or projects that might be detrimental to the identity of national minorities. Lastly, the great disparities between the sums invested in the various areas called for an explanation.

37. Turning to the question of limitations on the number of children, he asked for further information on how the regulations, which were rather flexible in rural areas, were applied in Tibet. If, as was believed, violators were fined, then the poorest were at a disadvantage. Clarification was therefore needed on that point. An explanation would also be useful on the significance of the 1995 Mother and Child Health Care Act, even though it did not exactly concern limitations on the number of children per se, as well as on how it was applied.

38. The question of internal migration also required a number of clarifications, if only because the figures in the report did not coincide with those that he had obtained elsewhere. His figures suggested that in Inner Mongolia, for example, the growth of the Han population, greatly exceeding that of the Mongolian, had most likely been due to heavy Han

migration into that region. Clarification on that point would be welcome, as well as detailed information on any Han migration to Tibet, and in particular to Lhasa.

39. The report contained relatively little on how article 5 of the Convention was being implemented and referred to the previous report, which was already old, and he therefore requested more recent and complete information. He was pleased to note that the Constitution provided not only for all the rights set forth in article 5, but also for the right to criticize any State body or official. It would be interesting to learn how that right was exercised.

40. The reference by the representative of China to unrest instigated by separatists or terrorists prompted him to seek further details on the prison population in the autonomous regions so that the Committee could have an idea of whether the minorities, and notably the Tibetan minority, were more strongly represented in prisons than in the population in general.

41. Concerning Xinjiang, it should be pointed out that at the end of the 1940s, the Uighurs and the Kazakhs had been in the majority. The Han Chinese, who at the time had accounted for only 8 per cent of the population, had since risen to 38 per cent of the total; it would be interesting to know the reasons for that mass influx. In the 1980s and 1990s, Xinjiang had been the scene of numerous incidents on which the delegation of China might provide some information. Mention should be made in particular of the uprising in 1990 in Baren, at the extreme west of Xinjiang. According to television reports, the organization responsible for the rebellion, during which 50 persons were said to have been killed by the security forces, had been the Islamic party of Eastern Turkistan, which had wanted to set up an Islamic Republic. Later, there had been further unrest which had led to a mass purge among officials in Baren, and 15 mosques had been closed down. To protest against those measures, Islamic groups had organized further demonstrations. As the State party had not mentioned those incidents in its written report or its oral presentation, it would be useful to learn its point of view.

42. Most minority groups belonged to the Muslim population, which had totalled 9.2 million persons in 1990, the largest minority being the Uighurs. Following the above-mentioned incidents, the Government had taken Draconian measures to restrict religious activities. Those measures had apparently been relaxed since then. What was the current situation in the region?

43. From the point of view of the economy, the region seemed to have progressed at the same pace as the rest of China. However, the traditional style of life of the Uighurs, who on the whole had been shepherds, appeared to have changed. Perhaps the delegation of China could tell the Committee something about their situation. Was it similar to that of Han Chinese living in the region?

44. With regard to the Tibet Autonomous Region, which only comprised part of historic Tibet, the information provided by the delegation of China implied that the situation in the area of education had improved. Yet the data made available by the Tibetan Commission of Education to a Swedish delegation that had visited the region in 1993 suggested otherwise. Education for Tibetans was said to be inferior to that for Han Chinese. Although 94 per cent of the

children attending primary schools in the region were Tibetan, they made up only 57 per cent of the university population. That might be explained in part by the fact that the Government of China had only recently begun to give serious attention to training bilingual teachers. Also, pupils who learned Mandarin Chinese in addition to Tibetan were exempt from taking English classes, and there was reason to fear that the effect of that measure would be to place them at a disadvantage later when they entered the labour market.

46. According to the statistics provided by the State party, in 1990 the illiteracy rate in the autonomous region had stood at 44 per cent. That was a high figure; what was the illiteracy rate among Han Chinese living in the region?

47. The situation of human rights was another subject of concern. There had been unrest in several parts of the region, and in particular in Lhasa. According to certain sources, the number of arrests was disproportionately high; he asked the delegation of China to comment.

48. The economic situation in Tibet was not as good as in the region of Xinjiang. According to a statement by the delegation of China the previous year before the Sub-Commission on Prevention of Discrimination and Protection of Minorities, China had invested 18 000 million yuan in Tibet. It would be interesting to know to which sectors those funds had been allocated. Why, for example, how many Tibetans currently owned their homes, and did those who wished to build receive the subsidies they needed?

49. In the area of employment Han Chinese seemed to be favoured over Tibetans. Was it true that they had three months' home leave every 12 months and that the Tibetans had only 30 days and their travel expenses were not reimbursed?

50. Regarding the situation in Inner Mongolia, it should first be pointed out that the Han Chinese living in the region constituted a large percentage of the population. The province had many natural resources and was developing rapidly. What was the impact of economic development on the way of life of the nomadic populations in the region?

51. Information on the education system was rather alarming. Whereas in the other autonomous regions, education was geared to the needs of the minorities that was not the case in Inner Mongolia at all. Calling for an end to the process of assimilation of the region's non-Han population, local students had demonstrated in 1995 before the Chinese Embassy in Ulan Bator. Any information that the delegation of the State party could provide on those incidents and their causes would be welcome.

52. Finally, he had a number of comments to make about paragraphs 7, 8 and 10 of the periodic report. Apart from translation problems, certain expressions used in those paragraphs suggested that China did not grasp the full extent of its obligations under the Convention. Concerning the words "its own meaning" in the penultimate line of paragraph 8 of the report's English version, he pointed out that the Convention had only one meaning, which must be the same for the Committee and States parties alike.

52. Mr. GAEVALOV noted that the information provided orally by the delegation of China was very useful in that it enhanced and updated information in the State party's periodic report. But a number of points needed to be clarified. In particular, he would like to know what the Convention's status was in domestic legislation and whether it could be directly invoked before the courts. What amendments had China made to its legislation and administrative procedures to give effect to the provisions of the Convention?

53. The last sentence of paragraph 10 of the report was somewhat ambiguous, notably where it was stated that "All residents of Macao are equal". It was to be hoped that that assertion also applied to the other inhabitants of the People's Republic of China. Paragraphs 17 to 21 of the report discussed the Notification issued by the State Council. Was the latter a legislative or an executive body?

54. The information on how article 4 was being implemented should have been more detailed, that being an article to which the Committee attached great importance.

55. Concerning paragraph 49 of the report, he inquired whether the ban on any organization propagating racial discrimination was imposed by a judicial or an administrative authority.

56. Paragraph 69 of the report indicated that the State Council had published a decision on the question of the Panchen Lama's reincarnation. Given that States generally preferred not to deal with such questions, why was the Government so involved in religious matters?

57. Paragraph 71 of the report stated that the Government of China took upon itself to give protection, both in legislative and in financial terms, to minorities. Welcoming that attitude, he asked how that principle was given practical effect at legislative level.

58. He was impressed by the measures taken in favour of minorities in the areas of education (paras. 78 to 88) and culture (paras. 89 to 113). But were not the efforts to protect and promote minority cultures to the detriment of other sectors of Chinese society? Likewise, if children from minority groups attended special classes, would that not leave them at a disadvantage if they applied later for public employment, which required a good command of Mandarin Chinese?

59. Generally speaking, the report contained very interesting information on the many measures taken to improve the living conditions of Tibetans. There was reason to consider whether the information on human rights violations in Tibet provided by certain United Nations bodies, such as the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Human Rights Committee, would not need to be qualified.

60. Ms. SADIQ ALI said that China had made use of every imaginable stratagem to wipe out Tibet's culture and identity. Chinese forces had reportedly killed 1.2 million Tibetans, and of the 6,254 monasteries previously in the region, no more than 13 remained. By organizing forced inter-ethnic marriages

and encouraging heavy Han immigration, the Chinese authorities sought to m
the Tibetans a minority in their own country. Those efforts were all aime
destroying a highly developed culture.

64. The Dalai Lama had agreed to autonomy and had shown a willingness to
discuss the question. But China had disregarded the sentiments of the
Tibetans and their spiritual traditions, as shown by the efforts to impose
Panchen Lama. She would be grateful to the representative of the State pa
if he could inform the Committee whether there had been any change in Chi
policy towards Tibet.

65. The situation in the province of Xinjiang was no better. There had
frequent demonstrations there, the question of ethnic autonomy having yet
be settled. The right to freedom of religion, conscience and belief as
enshrined in article 18 of the Covenant was not respected. In
provisional rules of 14 September 1994 on the administration of religious
activities in the Xinjiang Uighur Autonomous Region placed severe restric
on religious life in minority and religious practice is politically

66. The rapid influx of Han population into Xinjiang had already changed
demographic structure of the region. According to a report published in
December 1994 by the Cultural and Social Association of Eastern Turkis
Europe, Mongolia Partai, the Uighurs, who had made up 76 per cent of the
population in 1953, had accounted for no more than 47 per cent in 1990.
the newspaper China Daily had reported in its edition of 9 December 1992
the Chinese Government had decided to transfer more than a million Chines
the Xinjiang Uighur Autonomous Region. In such circumstances the Uighur
populations might well become a small minority in their own country and
their cultural identity in the decades to come.

67. The Cultural and Social Association of Eastern Turkistan also
reported in 1993 that despite the natural resources of Xinjiang, nearly
40 per cent of the non-Chinese population did not had a minimum living
standard. In that connection, how was the wealth of the autonomous regi
distributed?

68. Unrest among Muslims was increasing. In mid-March 1995, members of
Kirghiz minority had met in a mosque to express opposition to birth contr
policies, nuclear tests in Xinjiang and the transfer of the Autonomous
Region's resources to China. On 21 March 1995, the Xinjiang Daily newspa
had reported on a "six-point plan of action" reaffirming the primacy of th
Party over religion and announcing that the number of mosques and Muslim
schools would be strictly limited. Since the beginning of the nuclear te
in Lop Nav in 1964, the number of persons with cancer had grown noticeabl
the fruit trees in the region had died and members of the engineering cor
who had taken part in the tests had contracted leukaemia. In recent year
China had also set up depots in the Gobi Desert to stockpile nuclear wast
from Germany. Such waste was injurious to the local population, and the
Chinese Government should stop storing it in the region.

69. According to a report by Asia Watch dated 15 March 1995, demonstrati
for independence had taken place in six cities in Inner Mongolia between

November 1991 and January 1992. That same source had mentioned 15 political prisoners, including intellectuals and civil servants, and some 30 work camps in the region.

67. China had violated the principle contained in article 5 (d) (viii), of the Convention by detaining persons arbitrarily and denying them the right peacefully to enjoy freedom of expression and opinion. Nor did China comply with article 5 (b) of the Convention, because one of the persons arrested had been ill-treated during detention, and that had led to a serious deterioration in his health.

68. According to Andrew Higgins, Beijing correspondent of the London newspaper The Independent, Party internal document No. 13 of 11 May 1993, intended for senior Party officials in Inner Mongolia, had called for the crushing of the two main nationalist groups in Mongolia, the Institution for Ethnic Culture and the Institute for Ethnic Modernization. The leaders of those two groups had subsequently been arrested. Those incidents all constituted violations of the right to self-determination which, in addition to their international aspect, also had a domestic dimension.

The meeting rose at 6.05 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1164th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 9 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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GE.96-17770 (E)

The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Fifth to seventh periodic reports of the People's Republic of China (CERD/C/275/Add.2) (continued)

1. At the invitation of the Chairman, the delegation of the People's Republic of China took places at the Committee table.

2. Mr. SHERIFIS expressed appreciation for the abundance of information provided orally and the quality of the written report, which had been prepared in accordance with the Committee's guidelines, and had taken into account the Committee's comments in respect of China's previous report.

3. Much information had been provided about China's 55 minority nationalities, and he asked, with reference to paragraphs 58, 59 and 60 of the report how the Chinese Government ensured the participation of those nationalities at the highest levels in the Executive, the judiciary and the civil service.

4. With regard to article 14 of the Convention, he wondered whether the Chinese Government envisaged making the optional declaration in the near future. Furthermore, he wondered whether the Chinese Government envisaged early ratification of the amendments on the financing of the Committee adopted at the 14th Meeting of States Parties, given that only 17 States so far appeared to have ratified and a two-thirds majority was required.

5. Noting in paragraph 67 of the core document (HRI/CORE/1/Add.21) that the Chinese authorities made their report to CERD available to the public, he asked whether the content of the debate in the Committee and the Committee's concluding observations were also made public.

6. Mr. de GOUTTES said that, despite the amount of information in the report, the Committee needed to delve deeper and verify the real situation in China, given that information on that country was not easily obtainable, possibly because of the lack of transparency on the part of the authorities, and it was necessary to rely on information from other sources such as human rights organizations and NGOs. His comments were therefore based on the report, the core document, the conclusions of other United Nations human rights bodies and information provided by various NGOS and the United States Department of State.

7. In the general context of the implementation of the Convention, the encouraging information in the report was not borne out elsewhere. A report by Amnesty International, stated that several regions of China, notably Tibet, the Xinjiang and Inner Mongolia, experienced frequent violations of human rights, religious persecution, dysfunction of the justice system, and strict socialist control of the press and media. The most alarming information concerned Tibet, which the Committee had discussed at length in 1990. Amnesty International reported that the attitude of the Chinese authorities had hardened and that there were considerable ethnic and racial discrimination

against the Tibetan population, in the form of birth-control campaigns and enforced abortions, particularly in the urban areas. There was also a continued policy of settling Chinese farmers and Hani people in Tibet, and replacing Tibetan by Chinese officials at all administrative levels. Military personnel were also made to settle in Tibet in order to obtain pension rights. Religious freedom and cultural traditions were under attack: monks were arrested, the monasteries closed and demolished and the display of pictures of the Dalai Lama banned. There was also very strict political control of the media and information in general, discrimination in education whereby young Tibetans were deprived of educational facilities, and environmental damage caused by deforestation and the storage of toxic wastes. Such information, if accurate, was tantamount to institutionalized ethnic and racial discrimination designed to deprive Tibetans of their national identity. The Committee would welcome comments from the Chinese delegation on all those points.

8. With regard to paragraph 28 of the report, he wished to know what was meant by the development of socialist ethnic relations under the Ten-Year Plan on National, Economic and Social Development proposed by the State Council.

9. With regard to paragraph 49, he wondered what legal instruments or acts were used to deal with ethnic discrimination. The Committee would welcome statistics and specific examples of cases taken to court by the authorities, as only one example had been given in the report.

10. Turning to paragraphs 28 and 29 of the core document (HRI/CORE/1/Add.21), he asked for information on the role of the people's courts and people's procuratorates in combating racism and for examples of cases in which they had acted. He also wished to know the present status of the form of detention known as "re-education through work" which might be imposed on dissidents, human rights militants, and religious groups, particularly Catholic and Protestant, as referred to in the 1993 Amnesty International report.

11. Lastly, he wished to know whether all national minorities, including Tibetans, enjoyed the freedom to effect exchanges with foreign countries, as stated in paragraph 117 of the report.

12. Mr. DIACONU said that the Committee would welcome more information on the system of autonomous regions in China. What was the legislative competence of the authorities of the autonomous areas and were there any cases in which the Standing Committee of the National People's Congress had annulled legislation passed by those authorities? If so, what were the reasons for such annulment? Were the representatives of the autonomous regions in the Beijing Parliament elected only by those regions themselves or on the basis of proportional representation, and were the scattered minorities also represented? What languages were used in the central and local governments?

13. The Committee received many reports about Tibet and needed to deepen its understanding of the situation in that area. The demographic situation was an important indicator as a regularly increasing population was a thriving population. Some demographic information had been given at the Committee's previous meeting but more information would be useful. He particularly sought information on the ethnic composition of the local authorities and the relative proportions of Tibetans and Han. What language was used in their

activities? Did Tibetan cultural institutions still exist and was Tibetan culture and civilization still studied in schools? Were teachers trained in the mother tongues of the minorities in the autonomous areas?

14. With regard to article 4 of the Convention, paragraph 49 of the report referred to the banning of any domestic organization which propagated racial discrimination. He wished to know under which provisions of the Penal Code or other legislation such organizations were banned.

15. The report made very brief reference to legal remedies in connection with article 6 and he asked which bodies could be approached for reparation for human rights violations.

16. With Hong Kong due to become part of China in 1997, he asked whether China intended to guarantee Hong Kong autonomous status similar to that of other regions.

17. According to paragraph 52 of the core document (HRI/CORE/1/Add.21), international treaties took precedence over domestic law except where China had entered reservations. Could the Convention be invoked directly in the courts or administrative bodies?

18. Mr. VALENCIA RODRIGUEZ said that the programmes, laws and other measures taken to improve the lot of the minorities, and the efforts made to improve agricultural and industrial production deserved full recognition, but more information on those activities was needed to enable the Committee to assess their success.

19. With regard to paragraph 33 of the report, he wondered how foreign trade was regulated in China and what role, if any, the central Government played in the minority regions in that respect. Could those regions trade with any country they wished?

20. With regard to article 4, China appeared to be following the correct procedures in the circumstances referred to. However, the Chinese Government should reconsider the degree of conformity between its domestic legislation and article 4 of the Convention.

21. With regard to the State Compensation Law quoted in paragraph 73 of the report in connection with article 6 of the Convention, he wondered what would happen in the case of an unlawful act committed by an individual and whether he could be made to compensate the victim.

22. The extensive information regarding the implementation of article 7 was satisfactory particularly in respect of the improvements in the situation of minority groups. However, that information should be expanded. The Committee would be particularly interested to receive details of measures taken with regard to information.

23. According to paragraphs 37, 69, 71, certain paragraphs in connection with article 7, which had already been supplemented by the delegation, the situation in Tibet appeared to have improved considerably. However, the report did not contain any replies to the comments and questions raised by

the Committee in connection with China's previous report, as contained in paragraphs 118 to 121 of the Committee's report to the General Assembly (A/45/18). As most of those comments and questions had been restated at the present session, he asked the Chinese delegation to include that information in its next periodic report.

24. Mr. SHAHI noted that China was a unitary multilingual State and that its nationalities policy was aimed at combating chauvinism, mainly by the Han population. Bearing in mind that the Hans totalled some 1.1 billion and the national minorities comprised some 90 million, the Chinese authorities were to be commended for their awareness of Han chauvinism and the need to assure the national minorities that they would not be subjected to chauvinistic policies.

25. He also noted that the Chinese Constitution prohibited discrimination or oppression of any nationality. In that connection the Committee much appreciated the information provided orally the previous day and particularly the detailed statistical tables showing the population and main geographical distribution of Chinese national minorities. The charts did not, however, contain any reference to the Kazaks who had been referred to in the core document (HRI/CORE/1/Add.21). Clarification of that situation was requested.

26. Reference was made in paragraph 52 of the core document to the use of domestic law for guidance where no specific provision occurred in an international human rights instrument. Further clarification was needed. Furthermore, although paragraph 51 stated that no further special legal transformation was required to turn an international human rights agreement into domestic law, he wondered how China punished transgressions under article 4 of the Convention. Might not special laws prescribing punishment for such offences be enacted?

27. In the light of widespread concern in the international press that, as a result of Chinese policy of immigration into Tibet, Tibetans were becoming a minority in their own region, he was reassured to read that in 1995 Tibetans accounted for 96.38 per cent and Chinese of Han nationality 3.3 per cent of the population in Tibet, as opposed to 3.7 per cent in 1990. He noted with regard to Chinese policy towards the Dalai Lama, that the door was still open to negotiations on the condition that the Dalai Lama did not demand independence for Tibet. He hoped that there would be a possibility for negotiations on the Tibetan question with the Chinese authorities.

28. He was particularly appreciative of the frankness of the head of delegation's statement acknowledging some inequality of treatment and disparities between the living conditions of minorities and those of the Han majority, and hoped that the Government would continue to give all due attention to improving the living standards of the national minorities.

29. Mr. van BOVEN asked for further clarification, in a future periodic report or core document, of what exactly was meant by autonomous regions and national or minority autonomous areas. The term "minority area", for instance, led to confusion, since there might be a minority in a given region that was a majority nationwide, and vice versa. He asked whether the community-to-community assistance by economically developed areas to minority areas, referred to in paragraph 19 of the report, meant some kind of

development assistance and on what basis it was provided. It was an attractive concept, but there was always a risk of the donor being in a stronger position in any donor-recipient relationship. Possibly the answer was to be found in the statement in paragraph 28 of the report regarding the emphasis on the "building up and development of socialist ethnic relations", which was the only place in the report where the word "socialist" appeared, although it was in the preamble to the Constitution. He wished to know what the concept of socialism meant in China today, since it might have important implications in regard to the political system and political party power and hence be relevant to the Convention.

30. Noting China's policy of combating chauvinism, including Han chauvinism, as referred to by Mr. Shahi, he asked whether that was to be understood in terms of the wording of article 4 of the Convention, referring to condemnation of propaganda based on ideas of superiority of one race or group of persons of one ethnic origin. He requested further information in future on actual cases concerning the right to compensation or reparation for victims of racial discrimination under article 6 of the Convention.

31. Endorsing other speakers' questions about autonomous regions, he drew attention to the example of Inner Mongolia, where he understood Mongolians now accounted for only a small proportion of the total population and were alienated from their culture and roots, asking what could be done to preserve the culture of Mongolians in their own region. With regard to the Tibet Autonomous Region, he asked who exercised political leadership in Tibet and, with reference to article 5 (c) of the Convention, what the situation was with respect to political parties. He was concerned about the effects of Han immigration and reports of consequent preferential treatment in employment, housing and medical care, and the higher mortality rate among Tibetans. In higher education, it was reported that 55 per cent of students at the University of Tibet were Han Chinese, who officially represented only 3 per cent of the population. He was grateful that a paragraph (para. 69) had been included in the report on the subject of the Panchen Lama's reincarnation, but wondered whether the State Council's apparently major role in the process did not constitute intervention in certain religious affairs; further information on the State Council's functions in that regard was requested. In conclusion he associated himself with Mr. Sherifis' question about the implementation of article 14 of the Convention and ratification of the amendments to the Convention, and asked to what extent the Convention was disseminated in China and whether its report and the Committee's concluding observations would be made public.

32. Mr. RECHETOV welcomed in particular the comprehensive demographic data provided by China. He appreciated the emphasis placed on the economic development of the disadvantaged national minority areas as a prerequisite for any other form of development. He shared Mr. Wolfrum's concern about the need to develop infrastructure in remote areas, and commended the efforts that were being made to that end. Credit was due to China for recognizing and conferring autonomous status on so many different national minorities, which undoubtedly contributed to their development, although, as experience in his own country had shown, the granting of autonomy could lead to a proliferation of authorities. The action taken to preserve both local and national languages was also commendable.

33. The situation in Tibet had received wide media coverage, inter alia concerning the potentially serious effects of immigration. That being said, China and Tibet should be viewed in the context of general world developments and the widespread process of secularization. India, too, with its traditional caste system, faced problems in finding the appropriate place for religion in a secular State. In keeping with the Convention, it was important to ascertain the extent to which a local population was able to enjoy and practise its own culture and traditions and profess its own religion. Religious institutions must be safeguarded, but a problem arose when they aspired to be the supreme or sole authority. He was not sure that that was in keeping with the spirit of contemporary society. Religion should be in tune with the needs of the whole population, and not just a minority. In conclusion, he hoped that China would advance still further on the path to democracy and respect for human rights and the rights of minorities, bearing in mind the sometimes adverse effects of a purely rational approach to development.

34. Mr. YUTZIS said that China had embarked on a path that afforded very significant opportunities for development. He acknowledged its interesting, if controversial, economic approach, namely one country, two systems. The Committee's concern in that regard focused on the effects of such development on the situation of minorities. The fundamental goal of development had significantly transformed those populations' way of life. Gradually, whether deliberately or not, the close bonds between an ethnic group and the lands it inhabited had changed. It would be useful to hear further explanations of the rationale behind the development model adopted, bearing in mind the effects and limitations of the development process. He had a special interest in the regions inhabited by Mongolians.

35. Mr. CHIGOVERA requested clarifications about the impact of the delegation of certain powers to the national autonomous areas - referred to in paragraphs 11, 15 and 16 of the report - on China's implementation of its obligations under the Convention. Paragraphs 47 to 52 concerning article 4 of the Convention, for instance, seemed to deal with central government activities and obligations, but did not indicate how the Convention would be implemented at the autonomous area level. Furthermore, apart from a reference in paragraph 10 to the Basic Law of Macao, there was no reference to any specific provisions to prohibit racial discrimination within the meaning of the Convention. Precise information in that regard, especially concerning article 4, would help the Committee to assess the State party's compliance with the Convention. He would also be interested to know what differences there were, in terms of administrative and legislative powers, between the autonomous counties and prefectures, and their respective roles in ensuring compliance with the Convention.

36. The CHAIRMAN drew attention to General Recommendation XIX (47) on article 3 of the Convention, adopted by the Committee in August 1995, and requested the Chinese authorities, in preparing the next periodic report, to consider the bearing of the General Recommendation on parts of the country where there had been population transfers.

37. Mr. WU Jianmin (China) recalled that several questions had been asked about the status of autonomous areas. China was a unified and multi-ethnic

State, but it was not a federal one; all the autonomous areas formed an inalienable part of Chinese territory, although they had certain special characteristics. They were allowed to adopt their own regulations in certain fields and adapt instructions from the central Government to local conditions; they were entitled to use one or more of the minority languages; they had the right to train professional and skilled workers and managers from the autonomous areas; and they had a certain amount of freedom to manage their own local economies, including border trade and the management of local resources, and approve their own budgets. They could for instance approve joint ventures with foreign companies provided that the total value of the venture did not exceed US$ 30 million. They organized their own education, media and medical services using minority languages, and had some responsibility for population policy and family planning.

38. The Notification on Several Questions Concerning the Implementation of the Regional National Autonomy Law, mentioned in paragraph 17 of the report, was not a law, but a notice issued to government departments by the State Council, the supreme executive body of the Chinese State. Its purpose was to protect the interests of minorities and speed up the development of the autonomous areas.

39. China had a total of 56 ethnic groups - the Han Chinese, who made up 92 per cent of the population, and 55 minority groups, who together numbered approximately 90 million people. All ethnic groups were equal under the Chinese Constitution and had the same right to participate in public affairs. In fact, the 55 national minorities were represented by 439 deputies, or 14.75 per cent, of the 2,900 deputies in the legislative body, the National People's Congress, even though they made up only 8 per cent of the population. Members of ethnic minorities occupied important positions, such as that of Deputy Chairman of the National People's Congress and President of the Supreme People's Court.

40. Ms. WANG Yuehua (China) said that the Chinese Constitution was the fundamental law of the country and took precedence over all other laws and regulations, including the Regional National Autonomy Law.

41. The Mother and Child Care Law, referred to by Mr. Wolfrum, was not intended to control population growth, but to improve the health of mothers and children. It incorporated specific regulations governing the care of pregnant women and infants into the country's social and economic development plans and provided for special medical care and financial support for remote and poorer areas.

42. Under article 41 of the Constitution, citizens had the right to make criticisms and recommendations to the State and State organs. They could complain to local people's congresses, representatives of the Chinese People's Political Consultative Conference or the relevant administrative organs.

43. China considered that the rights enshrined in article 5 of the Convention were already amply guaranteed by the Chinese Constitution and other relevant laws. Full details had been given in previous reports, and she did not wish to repeat them. Members had pointed out a number of ambiguities in paragraphs 7-10 of the report. She wished to assure the Committee that

the activities of the Chinese Government had been intended to promote the objectives and principles of the Convention and that Chinese law was in full conformity with those objectives and principles. For instance, the laws relating to bilingual education for minority groups fully guaranteed the right to education and training laid down in article 5 (e) (v) of the Convention. The example of the Basic Law of the Special Administrative District of Macao (para. 10), which specifically prohibited discrimination on the grounds of race, was given merely as an example of a recent development, and did not mean that no other such legislation existed elsewhere in China. Paragraph 8 of the report was not intended to imply that China interpreted the struggle against racial discrimination differently from the rest of the world. All the above points could be attributed to problems of translation.

44. The Convention was considered part of Chinese domestic law. Many other laws, including the Civil Code, had specific provisions stating that, if differences existed between domestic law and international treaties to which China was a party, then the international treaty would prevail, unless the Government had lodged a reservation. China did not, therefore, need to incorporate the Convention specifically into domestic law, as other countries did. The Convention was recognized and accepted by Chinese courts and could thus be directly applied. However, since the Convention was often phrased in very general terms, more specific domestic legislation was sometimes required.

45. At present, China had no plans to recognize the Committee's competence to consider complaints from individuals under article 14 of the Convention. She would pass members' comments on to her Government. China had no objection in principle to the proposed amendment of the Convention regarding the financing of the Committee's expenses; however, any amendment to an international treaty was bound to take time.

46. Mr. Sherifis and Mr. van Boven had asked whether the Chinese Government made public its report to the Committee and the Committee's concluding observations. The report was published and publicized through the mass media, and the Committee's conclusions, as published by the United Nations, would be made available in China.

47. Mr. Diaconu had asked whether the Convention would apply in Hong Kong when that province returned to Chinese rule in July 1997. Her delegation understood the Committee's concern: however, under the Joint Declaration between China and the United Kingdom, the current system and lifestyle in Hong Kong would remain unchanged. China would assume responsibility for defence and foreign affairs and take on international rights and obligations in respect of Hong Kong. Since both the United Kingdom and China were parties to the Convention, it would remain in Hong Kong after July 1997.

48. Government representatives had participated in the selection of the eleventh Panchen Lama according to a ritual practised by Tibetan Buddhists since the thirteenth century. The Government's participation in the ritual was a historical convention which had become established over the centuries, and was not a political act.

49. Mr. ZHANG Chongqen (China), in response to Mr. Wolfrum's comment about the rapid increase in the numbers of some minority groups, said that some

minority groups had a naturally high population growth rate, and some which had previously classified themselves as Han Chinese had been reclassified. If one of a child's parents belonged to a national minority, the child could choose to be a member of that minority as well.

50. The Regional National Autonomy Law stated that national minorities with their own written language should use that language in their schools. Students from national minorities needed a good command of their own language as well as Mandarin Chinese. Accordingly, languages such as Tibetan, Mongolian and Korean were used in schools, and textbooks were also printed in those languages. Students from national minorities were able to study foreign languages, including English, Russian, Japanese and Arabic, at university level. His own wife was a professor of English at a university which had many Tibetan students.

51. With regard to the use of minority languages in university entrance examinations, he said that test papers were produced in various minority languages and that the language part of examinations was designed to test the candidates' knowledge of their mother tongue. In the compulsory education system, textbooks in minority languages were widely available. In the case of subjects such as chemistry, physics and mathematics, the standard textbooks used country-wide were translated into minority languages.

52. Mr. YANG Qiru (China) said that State investment in regions populated by minorities, including Tibet, was designed to improve the infrastructure and local amenities such as water resources and transport. In 1984 in Tibet, for example, there had been 43 small and medium-sized projects covering alternative forms of energy, transport, industry, education and culture, communications and food production. Investment had been increased in the ninth five-year plan. Of 60 projects undertaken in Tibet, 40 had been completed and the rest would be finished by the end of 1995.

53. Mr. WU Jianmin (China), replying to the question on the meaning of socialist relations in China, explained that it referred to a society that was free of exploitation and oppression and was based on equality.

54. The information on the Kazak population in China could be found in the documentation circulated among members of the Committee.

55. The dialogue with the Committee was to be commended, as was the information gathered by its members. However, it was not acceptable that, on the basis of that information, the Government of China should be urged to reverse certain of its policies. Members of the Committee should be careful to check the veracity of the information passed on to them because, although some of the groups supplying it had noble goals, others did not and were being financed to conduct separatist activities. China was no different from any other country in its lack of tolerance of separatist and terrorist activities. Most of the news reported on China was negative, but bad news was a saleable commodity. In 1989 and 1990, experts on China had predicted all kinds of disasters in the country, but since that time, China had enjoyed one of the best periods of its history, marked by political stability, double digit economic growth and an improved quality of life. The pamphlets circulated by

non-governmental organizations (NGOs) were one-sided and if the Committee were to judge the situation in China on the basis of such information, it was in grave danger of being misled.

56. With regard to the prison population, all citizens were equal before the law. Anyone that broke that law would be duly punished, regardless of whether they were members of a national minority or not. It should also be remembered that China's crime rate was quite low compared to other countries of the world.

57. Any of the Committee's questions that remained unanswered would be dealt with in China's eighth periodic report.

58. The CHAIRMAN said that the Committee agreed on the importance of checking the reliability of any information it received. The Committee also had to consider how to act when receiving reports from bodies or the media and weigh up its duty to alert the outside world to situations that could lead to serious ethnic conflict.

59. Mr. ABOUL-NASR said that the members of the Committee acted with the very best of intentions. By presenting delegations with the information it received, the Committee could debate it with them and it could be refuted if necessary. All members of the Committee valued States parties' contributions to dialogue and discussion and welcomed the information from Governments.

60. Mr. GARVALOV welcomed the information provided by the delegation on the situation regarding the Panchen Lama.

61. Mrs. SADIQ ALI said that she had not intended to imply support for separatist tendencies, but merely to point out what was contained in General Recommendation XXI (48) regarding the right to self-determination of peoples. If there was turmoil in three autonomous states in China, that seemed to indicate that Government policy there could be improved. There was no implication that China should reverse its policy and allow the autonomous states to secede.

62. Mr. de GOUTTES said that the reliability of sources of information was of constant concern to the Committee and it was important that they should be named. However, it should be remembered that, under General Recommendation 1 (XL), the Committee reserved the right, as a body of independent experts, to refer to information from sources other than States parties.

63. Some of his questions, two of which had been based on information provided by Amnesty International concerning the number of monasteries closed or destroyed in Tibet and the prohibition of pictures of the Dalai Lama in monasteries, had not been answered.

64. Mr. WOLFRUM (Country Rapporteur) said that he was impressed with the level of discussion with the delegation of China. The Committee in no way endorsed, encouraged or initiated separatism in any country.

65. The information on autonomous regions had explained the situation very clearly. However, it seemed that China's interpretation of autonomous and that of the Committee did not coincide, although that was in no way a criticism.

66. The representation of minorities in Communist Party structures had not been fully clarified and information on whether it was true that the percentage of minorities in such structures was low would be welcome. Similarly an ethnic breakdown of the ownership of housing and businesses, again giving percentages, should also be provided.

67. The details on bilingual education and minority language teaching were encouraging. However, was it true that university examinations were not he in all minority languages? Details of the extent to which the Han learned minority languages should be provided in China's eighth periodic report, together with further information on the Mother and Child Care Act.

68. An ethnic breakdown of the prison population would be useful.

69. It would be advisable for the oral presentation, report and concludin observations to be translated into Mandarin and minority languages in China and for the delegation to ensure that the misleading translations in the report were rectified.

70. The Committee was at complete liberty to receive information from NGO Responsibility for the accuracy of any information quoted by a member of th Committee lay ultimately with him or her.

71. The delegation of China withdrew.

The meeting rose at 1.15 p.m.

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Forty-ninth session

SUMMARY RECORD OF THE 1165th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 9 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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Togo

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GE.96-17776 (E)

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SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Second, third, fourth and fifth periodic reports of Lebanon (CERD/C/65/Add.4)

1. At the invitation of the Chairman, the members of the Lebanese delegation took seats at the Committee table.

2. Mr. EL KHAZEN (Lebanon) said that, for compelling reasons, his country had been unable to submit its periodic report on time. However, he promised to submit a report reflecting the current situation within the next few months and asked the Committee to consider that report at its fiftieth session.

3. The CHAIRMAN said the Committee agreed to postpone consideration of the report of Lebanon, which it awaited with great interest, until its fiftieth session.

4. The Lebanese delegation withdrew.

Review of implementation of the Convention in States parties whose reports are overdue

Fiji

5. Mr. DIACONU (Country Rapporteur) said that the only documents available were the fifth periodic report, dated 1982 (CERD/C/89/Add.3), and the summary records of the 629th, 925th and 926th meetings, at which the Committee had considered implementation of the Convention by the State party in the absence of a delegation from that State.

6. It was clear that, with two main ethnic groups, Fijians and Indians, the country had a delicate demographic balance. The Indians, who had been in the majority in 1986, had emigrated in large numbers since the 1987 coup d'état.

7. The Constitution of 1990 had made changes in the electoral system, education, land ownership and the appointment of government officials that had jeopardized the equality of rights between the two communities. It must, therefore be determined whether those changes were intended to eliminate inequalities inherited from the colonial period and to introduce acceptable positive discrimination within the meaning of article 1 (4) of the Convention, or whether they constituted actual discrimination. However, the scope of those changes, particularly with regard to the electoral process and land ownership, was so broad that it was difficult to view them as positive discrimination.

8. It also seemed that the dialogue between the Government of Fiji and the Indian opposition within the framework of a joint parliamentary commission set up to amend the Constitution of 1990 - a dialogue echoed by the International Movement against All Forms of Discrimination and Racism - had not yet borne fruit. Serious problems had also arisen with regard to property law, since leases would expire in 1997 and over 83 per cent of the arable land belonged

to Fijian communities. Without sufficient information, the Committee could not examine those questions in depth from the standpoint of implementation of the Convention.

9. In becoming a party to the Convention, the Government of Fiji had entered reservations to certain essential provisions, particularly article 5 (c) on political rights, article 5 (d) (v) on the right to own property, and articles 2, 3 and 5 (e) with regard to the right to an education. Those reservations were incompatible with the goal and purpose of the Convention, but at the time no other State party had made an objection to them.

10. The Committee must therefore convey to the State party that it was disturbed by the latter's lack of cooperation. It must also express its concern regarding implementation of the Convention, particularly in the areas of political rights and access to economic resources and education. Lastly, the Committee should state that it was prepared to discuss and consider the report, and any other information communicated to it, with representatives of the State party.

11. Mrs. SADIQ ALI said that political, social and racial tensions in Fiji had prompted the emigration of Indians in large numbers. According to statistics for January 1989, the Fijians had become the majority of the population and, in May 1994, the Minister of the Interior had asked the Indians who had left the country to return. Another crisis was brewing with the upcoming expiry of the leases held by Indian farmers on land belonging to Fijians. At the political level, the new Constitution, promulgated on 25 July 1990, had been immediately criticized for its racist nature, not only by the coalition of Indian parties in Fiji, but also by India, New Zealand and Australia at the session of the General Assembly held in October of that year. In May 1991, the Secretary of the Commonwealth had stated that Fiji would not be readmitted to that organization unless it amended its Constitution. The situation had only worsened with the May 1992 elections, and the hopes raised by the coalition Government of Prime Minister Rabuka had been dashed. Furthermore, the plan to facilitate the settlement in Fiji of Chinese nationals from Hong Kong, approved by the Government in January 1995, could only exacerbate social tensions.

12. Lastly, it should be made clear that, while education was not compulsory in Fiji, 95 per cent of the children of that country had been enrolled in school as of 1992. The first eight years of schooling were free and, thereafter, scholarships were available. In 1991, 23.8 per cent of the total budget had been allocated to education.

13. Mr. van BOVEN said that the Committee was being forced to examine the situation in Fiji for the second time on the basis of a very old report. During the Committee's previous consideration of that situation, in 1991, it had been noted that racial discrimination seemed to be institutionalized in Fiji, just as apartheid had been in South Africa. The recent information on the matter provided by Mr. Diaconu and Mrs. Sadiq Ali was far from reassuring. Furthermore, given the fact that Fiji's reservations concerning certain provisions of the Convention, referred to by Mr. Diaconu, seemed unacceptable, the Committee could not merely invite the Government of Fiji to resume

discussions as it had done in 1981. He therefore thought that the Government should be informed that, unless it submitted a new report for the Committee's next session in March 1997, its situation with regard to implementation of the Convention would be considered in accordance with the urgent procedure.

14. Mr. WOLFRUM said that the persistence of institutionalized racial discrimination in Fiji did indeed justify energetic action; he suggested that Mrs. Sadiq Ali should informally contact the Government of her country, India, in order to see if it would be prepared to follow the procedure described in article 11 of the Convention with regard to Fiji.

15. Mr. ABOUL-NASR said that, in the case in point, the problem was threefold: the absence of a report, the persistence of an alarming situation and the State party's failure to cooperate. Fiji was a very small country, and one of its principal resources came from sending troops for United Nations peace-keeping operations. It had only a small Mission in New York to service its participation in the General Assembly, and it had no mission in Geneva. The most the Committee could do, therefore, was to send the General Assembly a recommendation describing the situation; it would be useless to go any further. No State party had raised an objection when Fiji had formulated its reservations to the Convention; with regard to communications received from individuals under article 14 of the Convention, the Committee could only bring such communications to the attention of the State party concerned and ask what internal remedies were available. However, it would be injudicious to inform the State party that its case would be examined under the urgent procedure, as Mr. van Boven had suggested.

16. Mr. van BOVEN said that if the Committee simply expressed its dissatisfaction to the General Assembly, it would convey the impression that it was giving up. After all, it must be remembered that the Government of Fiji was extremely late in submitting its reports and that the situation in that country was very disturbing. While recourse to the procedure provided for in article 11 of the Convention, to which Mr. Wolfrum had alluded, was a distinct possibility, Governments had other more flexible and expeditious means than those described in that article of reacting to problems that arose in other countries. If the Committee simply sent a recommendation to the General Assembly, it was not certain that the Assembly would act on it since the country in question was a very small one. He therefore maintained his view that the Committee should clearly inform the State party concerned that if it did not communicate information in another report, the Committee would not hesitate to take the necessary action.

17. Mrs. SADIQ ALI drew attention to the fact that India had no Embassy in Fiji. Under those circumstances, it was difficult to see how Mr. Wolfrum's suggestion could be followed up.

18. Mr. SHAHI considered that, by not meeting their obligations under the Convention, the Fijian authorities were in a sense defying the Committee. The most obvious solution would be for the Committee to have recourse to the procedure provided for in article 11, and India was certainly in the best position to act within that framework. Failing recourse to article 11, the Committee could adopt Mr. van Boven's suggestion and warn the Government of Fiji that, if it had not received a new report for its March 1997 session, it

would consider the case within the framework of the urgent procedure, possibly requesting the Secretary-General of the United Nations to bring the situation to the attention of the Security Council. However, before reaching that point, it would be preferable to explore the options offered by article 11 and to discuss with Mrs. Sadiq Ali how the Indian Government might intervene.

19. The CHAIRMAN said that he objected to the practice in force at the time of the League of Nations whereby article 11 of the Convention had been invoked by a State having ties with the oppressed minority. Altruistic action by any other State, such as that which had led to the suspension of Greece from the Council of Europe, might be effective.

20. Mr. WOLFRUM considered that the Committee was faced not only with a State that was late in submitting its report, but with a State where the majority of the inhabitants could not participate in public affairs because of their ethnic origin. That situation was unacceptable and, in his opinion, sanctionable under the Committee's urgent procedure; the Committee had an emphatic duty to deal with situations in which ethnic tensions could degenerate into a major conflict. Neither the Security Council nor the General Assembly would take action on an appeal from the Committee concerning a small country like Fiji. It was for the Committee to act and, if it chose to do so under article 11, it could endeavour to convince any country, even one without an embassy in Fiji, although India seemed to be the country in the best position to initiate that procedure.

21. Mr. AHMADU said that, Fiji was far from being the only country that was late in submitting its report and furthermore, since racial segregation there was not institutionalized as it had been in South Africa - there even seemed to have been a slight improvement in the situation, it was inappropriate to place the two countries on the same footing.

22. It would be recalled that Fiji had seemed unconcerned by its expulsion from the Commonwealth in 1988. The Committee would be more likely to be taken seriously if it communicated in writing with the Minister for Foreign Affairs or the Minister of Justice of that country.

23. Mr. DIACONU agreed that the experts did not know how the current situation in Fiji differed from that which had existed prior to the Constitution. The Committee should attempt to obtain information from the State party, and not only from India as at present, and to discuss that information with the representative of Fiji, so as not to transform the urgent procedures into procedures applicable to States which were late in submitting their reports.

24. The CHAIRMAN said that that view had already been discussed during the consideration of the situations in Mexico and Algeria and had been rejected because the purpose of the urgent procedures was precisely to enable accurate information to be obtained.

25. Mr. DIACONU observed that the situation in the two countries that had just been mentioned, which were characterized by military conflict, had nothing in common with the situation in Fiji.

26. Mr. CHIGOVERA said that, after reading articles in a Fijian publication, he was convinced that, while things were far from well in Fiji, the situation was not critical. According to that publication, the opposition seemed to have won at last and a commission had been set up to revise the Constitution of 1990. Furthermore, all Fijians would henceforth be considered as full citizens. It did not, therefore, seem appropriate to initiate urgent procedures with regard to Fiji.

27. Mr. RECHETOV said there appeared to be three points of view within the Committee. Some felt that the situation in Fiji was similar to apartheid and was, therefore, a crime against humanity, which was a matter not for the Committee but for the Security Council. Others thought that the ethnic conflict in that country was serious and threatened to degenerate, while a third group considered that the situation was not very serious.

28. In his opinion, since appeals to the Office of the Secretary-General produced no results, a fact which encouraged the States concerned to continue as before, the Committee should take a special decision requesting Fiji to submit a report. It would also be desirable for the Committee to draw the State's attention to its concerns through its Minister for Foreign Affairs.

29. Mr. ABOUL NASR said there was no consensus on the idea of threatening Fiji with recourse to the urgent procedures. He did not think that that small State, whose problems were far less urgent those of other States with which the Committee did not concern itself, should receive the full force of the Committee's attack.

30. Mr. de GOUTTES said he thought that the Committee would have done better to spend part of the time that it had just devoted to considering the case of Fiji - about an hour and a quarter - to India or China.

31. He supported the solution suggested by Mr. Van Boven, namely that Fiji should be asked to submit a report to be considered in March 1997, without mentioning any urgent procedure.

32. The CHAIRMAN suggested that the discussion on Fiji should be closed and that Mr. Diaconu be requested to draft the Committee's conclusions on that State.

33. It was so decided.

Togo

34. The CHAIRMAN, suggested that, since Togo had not submitted any report since its initial report (CERD/C/75/Add.12) and that report had been considered by the Committee at its 640th, 641st and 924th meetings, the procedure previously followed for three other States should be copied; in other words, a purely formal solution should be adopted, without real discussion, noting the absence of a report and inviting the State to resume the dialogue.

35. Mr. AHMADU (Country Rapporteur) suggested that, since even high-level officials might be unaware of their countries's treaty obligations, all

countries that had acceded to the Convention should be urged to bear in mind the obligation to prepare reports and the secretariat should give wide publicity to the Convention.

36. Togo had not submitted a report in five years, which was not to its advantage since its situation was far better than that of some countries which were submitting their reports. It must be said in Togo's defence that the country was working hard to finish drafting its Constitution, the fourth in its history, that the various powers had not yet been clearly distributed and that officials, who often had little experience with human rights, did not remain in their posts for long and were, therefore, often obliged to leave a task unfinished. He suggested that Togo should call upon the Centre for Human Rights to help it to overcome those obstacles.

37. Since the submission of its previous report, Togo had taken several steps, particularly the lifting of the state of emergency and the strengthening of its Human Rights Commission and Ministry of Human Rights, which the Committee should certainly welcome. Furthermore, the Togolese Government considered that the country's legislation provided adequate protection against tensions such as those between the various ethnic groups in the power struggles which they had embarked upon in the name of democracy. However, that did not exempt the State party from sending periodic reports to the Committee.

38. Nevertheless, while it was normal for the Committee to attempt to ensure that countries reported regularly and promptly, he wondered if the Committee itself should contact the competent ministries. That seemed to him to be the secretariat's responsibility. In the case of Togo, which had set up all the requisite institutions and where the worst that could be said of human rights law was that it was somewhat unsystematic, all that was lacking was the will to start work and outside encouragement.

39. The CHAIRMAN announced that the secretariat would prepare draft conclusions on Togo, which it would transmit to Mr. Ahmadu for completion of the final version.

40. Mr. de GOUTTES drew the Committee's attention to the human rights training seminar that had recently been organized in Lomé by the Centre for Human Rights. That seminar had been held for all Togolese officials, and the practical exercises it had included had been extremely beneficial. Certain negative aspects of the situation of human rights had been brought to light, for example, the persistence of racial and ethnic tensions and even certain human rights violations, such as intimidation of activists or imprisonment for holding a particular opinion. But there were also positive aspects to be borne in mind: the existence of a National Human Rights Commission (in that regard, the Committee should perhaps stress the importance of restoring that Commission to its full effectiveness), the lifting of the state of emergency, the existence of several active non-governmental organizations (NGOs), and the Government's willingness to prepare to submit periodic reports and to take more account of the human rights conventions.

41. He hoped that the seminar would result in a new periodic report to be submitted to the Committee.

42. The CHAIRMAN said that, in the absence of a report, the Committee had thus completed its consideration of implementation of the Convention in Togo.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Organization of the work of the Committee

43. Mr. YUTZIS asked when the Committee would be able to consider the question of the way in which it had spent its time during the current session.

44. The CHAIRMAN said that the Bureau intended to submit, during the third week, a suggestion on how time should be allocated at the next session. Members would doubtless wish to use the experience gained during the current session in taking a decision in that regard. They would, therefore, have the opportunity to express their opinions on the use of time during the current session. If Mr. Yutzis wanted a specific discussion to be devoted to that matter, he (the Chairman) would discuss the possibility of doing so with the Bureau.

45. Mr. YUTZIS said that the Committee should not continue to function during the second week as it had done thus far. With the Chairman's permission, he wished to make a number of observations.

46. While he realized that it was impossible to work without a previously established schedule and that it was important to keep to the time-limit set, he nevertheless thought that what had happened during the current session was jeopardizing not only the form, but the very nature of consideration of certain matters. As Mr. de Gouttes had pointed out, the Committee had just spent nearly 1 hour and 20 minutes on Fiji, but had been unable to give certain matters connected with India and China the attention they deserved. In the case of India, the explicit expression of the representative of the State party's willingness to explore certain matters with the Committee in greater depth had not been taken into consideration. In the case of China, it was thanks to the sincerity and courage of the delegation that it had been possible to deal with a substantive question regarding the use of sources of information. Thus, timing and organizational matters were taking precedence over the intrinsic importance of the questions to be considered. That situation was creating a climate and tensions prejudicial to the work of the Committee.

47. He therefore asked the Chairman to be a little more flexible than in the past in order to ensure greater equity in the treatment of matters submitted for the Committee's consideration.

48. Mr. ABOUL NASR said he fully shared the view expressed by Mr. Yutzis and wished to make two additional comments. First, he thought it would be premature to consider the Committee's programme of work for its next session: he would prefer the Committee to discuss what it would do the following week. Secondly, it was not the Bureau's job to take decisions for the Committee: the Bureau proposed and the Committee disposed. The Committee needed greater flexibility in its work. In his opinion, much of the afternoon had been

wasted. The Committee could have been provided with a list, drawn up by the secretariat, of countries that had been late in submitting their reports and devoted only a minute to taking a decision on them.

49. Mr. de GOUTTES said that, while he recognized that the Chairman's job was not an easy one, he shared the opinion expressed by Mr. Yutzis and Mr. Aboul Nasr. Flexibility was essential in view of the importance of the situations in question. The consideration of reports was the Committee's primary task, and it was important not to give delegations the impression that it was hurrying that process. He feared that such had been the case with the consideration of the reports of India and China.

50. Mr. WOLFRUM said he shared the opinions expressed by the three previous speakers. The Committee had not had the in-depth discussion with the Indian delegation that was called for by the concept of caste, even though that delegation had been eager to prolong the discussion. The Committee must avoid disappointing delegations. The consideration of reports was the Committee's only way of changing the situation in a country. Similarly, the Committee had been unable to engage in an appropriate exchange of views with the High Commissioner for Human Rights, and he hoped that another meeting with the High Commissioner would be possible.

51. The Committee must realize that a great deal of time was needed for the preparation of a written report and an oral statement. When a country had made that effort, it was scarcely proper to grant its delegation only a brief period of attention. The Committee should, therefore, spend as little time as possible on "other matters" in order to set aside all the time needed for exchanges of views with States.

52. Mr. AHMADU said he fully shared the opinions expressed by the four previous speakers.

53. Mr. DIACONU said he, too, thought that the Committee needed more time for the consideration of some reports than for others. However, it must also be recognized that there were increasing numbers of reports to be considered - which was a good thing - and that the Committee did not and never would have more time. Under those conditions, how could it carry out its task? The only way to do so was for the members of the Committee to be more disciplined, re-read the Convention and refrain from raising questions that did not fall within its mandate. It was normal for the Chairman to try to organize the work of the Committee, but each member must also attempt to be understanding and disciplined.

54. Mr. RECHETOV said he found the present discussion very useful and timely. The Committee did, indeed, seem to be forgetting what its work was. It adopted new procedures, such as early warning and urgent procedures, and took decisions, all without much in the way of concrete results. On the other hand, it was devoting less and less time and attention to the areas that really fell within its mandate. After submitting their reports, States might ha.e the impression that the Committee did not have time to discuss those reports with them. Those discussions were extremely important since they enabled the Committee to obtain information, form a well-founded opinion and,

on that basis, hold exchanges of views with States. He therefore appealed to all members to let the Committee give all due importance to its primary task: the consideration of reports. Everything else was secondary.

55. In his opinion, the Committee's meeting with the High Commissioner for Human Rights had been a disappointment. The High Commissioner had been 40 minutes late for his meeting with the Committee, and no really important question had been raised. Of course, such meetings were not the crux of the Committee's work, but it was important that maximum benefit should be derived from them.

56. Mr. CHIGOVERA said that it was obviously necessary to define more clearly the functions of the Bureau, particularly with regard to the organization of the Committee's work. The Committee needed more time to consider reports but, in order to do so, it needed guidance from the Bureau.

57. As Mr. Yutzis had said, it was impossible to work without a previously established schedule. It was important for the Committee to consider each report within the scheduled period in order to ensure equal treatment of all reports. Furthermore, the longer a speaker talked, the more he infringed on the right of others, whether members of the Committee or of delegations, to express their views. The question at present was to determine whether the discussion of the work of the next session, which had been scheduled for the third week, was really required for the rest of the current session and whether it would not be better to devote more time to the consideration of reports.

58. The CHAIRMAN thanked Mr. Yutzis for having raised important questions. First, with regard to the functions of the Bureau, he fully shared the opinion expressed by Mr. Aboul-Nasr. Secondly, with regard to the number of reports scheduled for consideration at the current session, he asked the members of the Committee who had not been present at its 1155th meeting, the last of the forty-eighth session, to refer to the summary record of that meeting. Four or five members of the Committee had pressed for the addition of Cambodia, Pakistan, Guatemala and Panama to the list of countries whose reports would be considered (fortunately, those reports had not been submitted or had been withdrawn). That decision had doubtless been a formality, but no Committee member had objected to it. He had therefore been within his rights in assuming that it corresponded to the Committee's wishes, and he had merely acted accordingly. Thirdly, as Mr. Chigovera had stated, the question of the time allotted to each report was becoming increasingly urgent. It was, therefore, all the more important for the decision on that question to be taken by the Committee as a whole.

Meeting with the High Commissioner for Human Rights

59. Mr. de GOUTTES, summarizing his conversation with the High Commissioner for Human Rights, Mr. Ayala Lasso, that the discussion had first dealt with the general questions raised by Mr. Ayala Lasso at his meeting with the Committee. In that regard, he had informed the High Commissioner that, for the Committee to carry out its task in an appropriate manner, it must have all the necessary documentation at its disposal and that, for that reason, he was opposed to any kind of restriction in that respect. On the question of the

grouping of the various reports submitted by States to treaty bodies in a single document, he had informed the High Commissioner that the Committee w continuing its consideration of the matter and had not yet taken a decision

60. The conversation had then turned to the situation in Burundi. In tha regard, he had informed the High Commissioner that the Committee had appreciated the information communicated to it concerning the human rights observers' report and the supplementary information provided by Mr. Ayala Lasso. He had stressed the importance that the Committee attache to direct and regular discussions with the High Commissioner. After drawin Mr. Ayala Lasso's attention to the Committee's statement on Burundi, the te of which had been communicated to the High Commissioner, he had emphasized that, in the case of Burundi as in that of other countries, the Committee h always taken care to make a specific contribution.

61. In reply to those expressions of concern, Mr. Ayala Lasso had said th he, too, thought it was important to maintain regular contact with the Committee and that, if necessary, he would be willing to engage in another exchange of views before the end of the current session. With regard to Burundi, he had stated that he hoped the presence of human rights observers that country would be maintained and that he had even requested an increase their numbers.

62. Mr. Ayala Lasso, had then dealt with questions which had been left unanswered at his meeting with the Committee. In reply to a question by Mr. Sherifis concerning efforts to be made to induce all States to ratify t international human rights instruments, the High Commissioner had replied t a seminar on that question had been organized in Addis Ababa for African States and that another, targeting States in Asia and the Pacific, would be held in Amman from 23 to 26 September 1996. In reply to a second question Mr. Sherifis, concerning the effective implementation by States of the recommendations of the various treaty bodies, Mr. Ayala Lasso had stressed difficulties encountered by all the Committees. In that regard, he had not that a survey had shown that there was a marked imbalance between recommendations made and measures taken to give effect to them. It had bee decided that, if the necessary resources were available, a study would be devoted to that question within the framework of the Committee on the Right of the Child. In the light of the conclusions of that study, the experienc might later be extended to all treaty bodies.

63. The High Commissioner had also mentioned the sensitive question of refugees and the rights of persons whose property had been expropriated. I that regard, he had said that the problem had been studied in the context o Rwanda and the former Yugoslavia and that his office was continuing its consideration of the matter, which had been drawn to the attention of all t competent United Nations bodies. He had stressed the need to ensure coordination of all United Nations initiatives in that area.

64. Lastly the High Commissioner had raised the question of Kosovo. In t regard, he had stated that he had taken note of the Committee's desire to initiate a new project with a view to following up the earlier good offices

mission. Anxious to avoid duplication, he had asked the Committee to ensure that any action on its part was coordinated with the many other ongoing projects concerning Kosovo.

65. Mr. SHAHI considered it urgent for the Committee to organize another meeting with the High Commissioner for Human Rights, particularly since the earlier meeting had been devoted almost entirely to the question of the lack of resources and it had not been possible to take up document E/1996/87, which dealt with the situation in a number of countries, including Bosnia and Herzegovina, Croatia, Rwanda and Burundi. In that regard, it was important for the Committee to make appropriate preparations for that meeting in order to ensure a fruitful discussion. With regard to Bosnia and Herzegovina, the question was what the situation in that country would be once the mandate of the Multinational Military Implementation Force (IFOR) ended. Was there not a risk of escalation?

66. Mr. WOLFRUM agreed with Mr. Rechetov and Mr. Ahmadu that the Committee should undertake another mission to Kosovo as soon as the political situation there made it possible to do so.

Other documents

67. The CHAIRMAN drew attention to a letter (document without a symbol, distributed at the meeting in English only) in which the Central Council of German Sinti and Roma complained that Spain, Romania and the Council of Europe were using discriminatory language to designate the Sinti and Roma minorities.

68. He also drew attention to three other documents without symbols, distributed in English only and not intended for immediate consideration: the draft document concerning the proposal that the Committee should be represented at the meeting of treaty bodies on the question of the grouping of the various reports of States parties into a single report; Mr. Garvalov's draft recommendation on restrictions on the translation of reports submitted by States parties to the Committee; and the draft document on country rapporteurs.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION (agenda item 7)

69. Mr. HUSBANDS (Secretary of the Committee) drew attention to a document without a symbol, issued in English only, containing the list of States parties whose periodic or initial reports were five or more years overdue. Three of those countries, Uganda, Afghanistan and Nepal, had not yet submitted a report even though letters had been sent to inform them of the procedure that the Committee intended to adopt in those cases. The other countries whose periodic reports were five or more years overdue were the Seychelles, Ethiopia, Argentina, the Libyan Arab Jamahiriya, the Niger, the Philippines, the Federal Republic of Yugoslavia (Serbia and Montenegro), Rwanda, the Dominican Republic, Cameroon, Mongolia, Burundi, the Netherlands, Cuba and Jordan. The Committee had not yet contacted those countries. As to Portugal, which appeared on the above-mentioned list, its report would not be five years overdue until 22 September 1996. Eight other countries (Liberia, Guyana,

Suriname, the Congo, Antigua and Barbuda, Mauritania, Saint Lucia and Bahrain) had not yet submitted their initial reports although they should have done so five or more years previously.

70. The CHAIRMAN asked the members of the Committee to say what procedure they wished to adopt in that regard.

71. Mr. WOLFRUM said he did not think there was any reason for the Committee not to proceed as it had done in the past.

72. Mr. DIACONU said that, while he agreed with Mr. Wolfrum, it would be presumptuous to expect countries like Rwanda, Afghanistan and even Burundi to submit their reports. On the other hand, other countries, such as Nepal, Uganda, the Seychelles. Ethiopia and Argentina, could fulfil that obligation quite rapidly.

73. Mr. WOLFRUM noted that the situation in Rwanda and Burundi was already on the Committee's agenda and that nothing would be changed by including those two countries in the list of States whose reports were overdue.

74. The CHAIRMAN said that, if there was no objection, he would take it that the members of the Committee wanted Argentina to kept on the list of countries whose reports were long overdue.

75. It was so decided.

76. Mr. RECHETOV reminded the Committee that the majority of newly-independent States that had been part of the former Soviet Union had been parties to the Convention since 1991 by succession or accession. However, with the exception of Ukraine and Belarus, which had had a different status in the former Soviet Union, none of those States had submitted a report to the Committee. It would be useless to have recourse to the urgent procedures on the matter. The Committee might simply write to those States individually, inviting them to submit an initial report pursuant to article 9 of the Convention. Such a measure should make it possible to begin the process of submission of reports for all the States concerned.

77. Mr. CHIGOVERA said that, while the case of the above-mentioned States did not call for recourse to the urgent procedures, he wondered why the Committee did not simply apply to them the same procedure as that followed with regard to States whose reports were five or more years overdue. In that regard, he drew attention to the case of Estonia, which had been a party to the Convention since 1991. In a report submitted to the Human Rights Committee, that State had addressed the problem of minorities, which obviously fell within the ambit of the Committee on the Elimination of Racial Discrimination. In that case, the Committee should have contacted the State party and requested it to meet the obligation incumbent on it pursuant to article 9 (1) of the Convention.

78. Mr. WOLFRUM noted that, while the Committee had every right to request States parties to the Convention whose reports were overdue to fulfil their obligations, the situation was quite different with regard to States which, like some States from the former Soviet Union, were not parties to the Convention.

79. After an exchange of views in which Mr. WOLFRUM, Mr. DIACONU, Mr. AHMADU and Mr. CHIGOVERA took part, the Committee decided to send newly-independent States that had been part of the former Soviet Union and had not yet acceded to the Convention a letter inviting them to do so.

The meeting rose at 5.50 p.m.

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1166th MEETING

Held at the Palais des Nations, Geneva
on Monday, 12 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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ORGANIZATIONAL AND OTHER MATTERS (continued)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Review of implementation of the Convention in States parties whose reports are overdue (continued)

Second, third and fourth periodic reports of Somalia (CERD/C/88/Add.6; CERD/C/SR.728 and 1114)

1. Mr. ABOUL-NASR said that recent developments in Somalia, with the death of General Aidid, a separatist State in the North, no central Government and reports of intervention and subsequent withdrawal by Ethiopian troops, added up to a situation of chaos and confusion. Peace initiatives by the League of Arab States and the Organization of African Unity had been unsuccessful, having been shunned by the warlords. The crux of the issue indeed seemed to be the dispute between the warring factions rather than a problem of racial or ethnic origin. In the circumstances, he had serious doubts about the advisability and feasibility of discussing the implementation of the Convention in Somalia further. No report could be expected of a State party which was in the unique situation of having neither a Government nor a legislative body, nor any representation abroad. The Committee might, however, draw the attention of the General Assembly, in its annual report, to the seriousness of the situation in Somalia. It was difficult even to consider a date for future consideration by the Committee and it would be preferable to wait until the situation had settled down to some extent.

2. Mr. GARVALOV agreed that it was pointless to continue to discuss the matter. The Committee might wish to inform States parties and the General Assembly in its report that the Committee would keep Somalia on its agenda, but would return to it only when the rule of law had been restored and there was a responsible Government from which it could receive the information it sought.

3. The CHAIRMAN asked Mr. Garvalov to help in drafting the concluding observations on Somalia and observed that the Committee had thus completed its review pending adoption of the concluding observations.

Second periodic report of Cape Verde (CERD/C/86/Add.4; CERD/C/SR.662, 663, 949 and 952)

4. Mr. AHMADU, speaking as rapporteur for Cape Verde, observed that no reports or information had been received from the State party since 1983. Some of the reasons for the failure by countries like Cape Verde to report regularly were the large number of reports which countries were required to submit to the various human rights treaty monitoring bodies, the somewhat strict guidelines for reporting, ignorance of reporting procedures by drafting officials and the difficulty in working out the modalities for technical assistance with the Centre for Human Rights. In many cases there was also a feeling that all the requirements for implementation of the Convention were covered either by the Constitution or the Penal Code.

5. The original ethnic diversity in Cape Verde had resulted in a population that was mostly of mixed descent and had the advantage of speaking one language. It was generally a harmonious society, and the same could be said of the human rights situation, although some questions remained about the enjoyment and exercise of rights and freedoms under article 5 of the Convention. The State party must be made to understand that by failing to report periodically it was doing itself a disservice, since considerable progress had been made in practice in implementing the Convention. For instance, the 1991 elections had proceeded normally and fairly.

6. Mr. ABOUL-NASR, endorsed a comment by the CHAIRMAN that there were two problems: individual countries' failure to report and the general problem of non-reporting. It appeared somewhat futile to continue discussing the case of a country like Cape Verde, which, unlike Somalia, did have a Government from which a report could be expected. It was the general problem that must be addressed. In its report to the General Assembly, the Committee should draw attention, in strong, clear terms, to the countries that failed to comply with their obligations under the Convention, thus preventing the Committee from doing its work, and ask the General Assembly to request the State party to report as soon as possible.

7. The CHAIRMAN said that, with regard to Cape Verde in particular, the Committee might adopt a text modelled on the three paragraphs concerning Côte d'Ivoire adopted at its forty-eighth session, stating that the Committee had reviewed the situation based on the previous report and review, regretted the State party's failure to respond and decided to send a communication urging a resumption of the dialogue and suggesting that the Government should avail itself of the technical assistance offered by the Centre for Human Rights.

8. Mr. ABOUL-NASR said it was important for the Committee to recommend that the General Assembly should call upon the States parties concerned, who should be mentioned by name, to comply promptly with their reporting obligations; the General Assembly might then consider any further action.

9. The CHAIRMAN said that the Committee had thus concluded its review concerning Cape Verde, pending adoption of concluding observations.

Fifth and sixth periodic reports of Lesotho (CERD/C/90/Add.2; CERD/C/SR.608, 949 and 952)

10. Mr. AHMADU, speaking as rapporteur for Lesotho, outlined some of the developments in that country in recent years, with the deposition of King Moshoeshoe II, successive military coups and attempted coups, the installation of the King's son on the throne and ultimately the mediation of the neighbouring countries of South Africa, Zimbabwe and Botswana, the restoration of the Government and the abdication of the King's son in favour of his father. There had been a number of constitutional changes, but, with the restored order, the State party should now be able to comply with its reporting obligations.

11. Mr. CHIGOVERA added that the restoration to the throne of King Moshoeshoe II, in keeping with Sotho customs and tradition, and the new

constitutional arrangements had been the result of a compromise agreement mediated by the three neighbouring countries, which had also helped in redefining the respective functions of the monarchy and the Government, one of the aims being to prevent any future military coup d'état. The initial stage had been the re-installation of the King in January 1995, followed by a review of the Constitution, defining the powers of the army, the civil service, the Government and the police. That exercise had been completed early in 1996. The conclusion to be drawn was that the Government's efforts in recent years had been devoted to resolving internal problems, but that now that there was a democratic, stable Government accepted by the people, it should soon be in a position to comply with its reporting obligations under international human rights treaties. Although he agreed that the Committee should bring the non-compliance of State parties to the attention of the General Assembly with the request that it put pressure on those States, the special circumstances of Lesotho might warrant its being viewed somewhat differently.

12. Mr. ABOUL-NASR asked whether the Government of Lesotho had been notified of the Committee's intention to discuss its implementation of the Convention.

13. The CHAIRMAN said that all States whose reports were overdue had been notified of the Committee's intention to discuss their cases.

14. He suggested that the Committee should adopt the same concluding observations in respect of Lesotho as it had in respect of Côte d'Ivoire, and also take note of recent developments in Lesotho.

15. It was so decided.

Initial report of Saint Vincent and the Grenadines (CERD/C/85/Add.1; CERD/C/SR.652, 949 and 952)

16. The CHAIRMAN, speaking as rapporteur for Saint Vincent and the Grenadines, said that, while the Government had not submitted a report on its implementation of the Convention, it had submitted a core document of basic social, economic and demographic data. No developments relevant to the Convention had taken place in the country, as far as he was aware. He suggested that the Committee should adopt the same concluding observations as it had done in the case of Côte d'Ivoire.

17. It was so decided.

Initial report of the Solomon Islands (CERD/C/101/Add.1; CERD/C/SR.635, 636, 949 and 952)

18. Mr. LECHUGA HEVIA, speaking as country rapporteur, said the Solomon Islands had submitted its initial report in 1983: since then, no further reports had been forthcoming, and the Committee had received no reply to the questions it had raised during its review of the State party's implementation of the Convention in 1992. The Government of the Solomon Islands had stated that racial discrimination was prohibited by the provisions of article 15 of the Constitution, but that article could be suspended in "extraordinary circumstances", which were not further defined.

19. The CHAIRMAN suggested that the Committee should adopt the same concluding observations as it had done in the case of Côte d'Ivoire.

20. It was so decided.

Third, fourth and fifth periodic reports of Botswana (CERD/C/105/Add.1; CERD/C/SR.654, 949 and 952)

21. The CHAIRMAN, speaking as country rapporteur, said that the Government of Botswana had written to say that it could not participate in the current session. The Government had further stated that it was anxious to submit its overdue reports, and had requested a sample report to help it to prepare them. He suggested that the Committee should adopt the same concluding observations as it had done in the case of Côte d'Ivoire and send a copy of the Government's letter to the Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights, asking it to contact the Government of Botswana to offer technical assistance in the preparation of its reports.

22. Mr. ABOUL-NASR, supported by Mr. GARVALOV, proposed that the goodwill shown by the Government of Botswana should be acknowledged in the Committee's concluding observations.

23. It was so decided.

Third, fourth and fifth periodic reports of the Lao People's Democratic Republic (CERD/C/105/Add.4; CERD/C/SR.707, 709, 949 and 952)

24. Mr. de GOUTTES, speaking as rapporteur for the Lao People's Democratic Republic, said that no report had been received from that country since 1984. In its previous review in 1992, the Committee had asked for information about, inter alia, the principal social, economic and demographic indicators, measures to promote democratization and the protection of human rights and improve the situation of ethnic minorities, the situation of refugees and measures to close the "re-education camps".

25. He now wished to add three further questions. The first concerned the measures adopted by the Government to reduce the ethnic tension resulting from the economic disparities between the different regions. Economic liberalization had led to high inflation and depreciation of the currency. The Meo rebellion was reported to be continuing to the north and east of the capital, Vientiane, while some isolated mountainous areas were effectively beyond the control of the central Government.

26. His second question concerned the re-education camps which, according to Amnesty International, had not all been closed down. In particular, it was alleged that prisoners of conscience were still being held in Re-education Camp No. 7 in the remote northern province of Houaphan.

27. His third question concerned the continuing restrictions on freedom of expression and censorship of the media which, according to Amnesty International, made it difficult to obtain information about the human rights situation.

28. He suggested that the Committee should address the above questions to the Lao Government, along with the questions still unanswered from the previous review in 1992 and an indication of the technical assistance services available to help the Government with its reply.

29. Mr. ABOUL-NASR noted that the questions the Committee asked must be confined to its mandate - namely, the Lao Government's compliance with the Convention. Information about the refugee situation would, however, be most useful. The question about the re-education camps should be rephrased, since the camps themselves were not necessarily a bad thing; it was what was happening in them that might be open to doubt.

Fourth and fifth periodic reports of Burkina Faso (CERD/C/105/Add.5; CERD/C/SR.711, 949 and 952)

30. Mr. AHMADU, speaking as rapporteur for Burkina Faso, said that the country had suffered considerable political instability since the submission of the previous report. The Committee might perhaps wish to ask which of the policies of previous Governments were being vigorously pursued under the presidency of Captain Blaise Compaoré, and which ones had been abandoned. He felt that the Government was anxious to cooperate with the Committee and that, if encouraged, it would soon submit the overdue reports. The Advisory Services, Technical Assistance and Information Branch of the Centre for Human Rights should contact the Government and vigorously promote the services it could provide.

31. Mrs. SADIQ ALI said that, while she agreed with many of the points raised by Mr. Ahmadu, the national human rights body of Burkina Faso had been critical of the President, and the media were still not totally free.

32. The President had named six national priorities, namely the encouragement of agricultural production, the informal sector, small- and medium-sized businesses and women's productive activities, the battle against desertification and the promotion of education, sports and culture. They would prove a considerable challenge, since Burkina Faso was one of the poorest countries in Africa. She wondered what action the Government had taken on those priorities.

33. The exodus of refugees from Mali to Burkina Faso (estimated at 50,000 in December 1994) had led to mounting insecurity and persistent conflict. What action had been taken to defuse the situation? Another problem was that of growing youth unemployment and dissatisfaction. Students had boycotted their classes and workers had called for better living conditions and reasonable prices for basic necessities. How did the Government intend to respond to that dissatisfaction?

34. The CHAIRMAN suggested that a copy of the summary record of the current meeting should be sent to the Government of Burkina Faso in order to reflect the concerns raised by members.

35. Mr. ABOUL-NASR reiterated that any queries raised must be relevant to the Convention.

36. Mr. de GOUTTES suggested that, as it had done at the previous review in 1992, the Committee should ask what measures the Government had taken to reduce regional disparities and unify the various ethnic groups. The Committee might also ask whether any cases had been brought to court following incidents of ethnic conflict, whether those conflicts had a political dimension and how often the available remedies were used in practice.

37. Mrs. SADIQ ALI said that the problem of refugees from Mali was a serious one. Burkina Faso was a multi-ethnic society and the problems of unemployment, for instance, affected many ethnic groups.

38. Mr. AHMADU agreed that it might be more productive to repeat the questions from the Committee's previous concluding observations, since to introduce new ones might merely confuse the issue. In any case, the number of refugees in Burkina Faso was relatively small.

39. The CHAIRMAN said that the views expressed by members would be taken into account in the Committee's concluding observations. The Committee had thus concluded its consideration of overdue reports.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

Proposal for the revision of the general guidelines

40. The CHAIRMAN said that the Committee had been asked to take account of gender perspectives in its general guidelines regarding the form and contents of reports to be submitted under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.3). According to the proposed amendments to the guidelines the Committee would express concern that racial discrimination might be combined with gender discrimination, and request States parties to supply gender-disaggregated data and explain in their reports the gender implications of racial discrimination with respect to each of the articles of the Convention.

41. Mr. DIACONU said that such a revision of the guidelines would lead the Committee into territory that was clearly not part of its mandate. The Committee on the Elimination of Discrimination against Women (CEDAW) was competent to deal with gender issues. In the majority of cases of racial discrimination, both men and women were affected equally.

42. Mr. WOLFRUM said that if women were discriminated against on the grounds of their race, then that fell within the competence of the Committee, but discrimination on grounds of sex did not. The reference to "gender-disaggregated data" was at the very least confusing, and given that States often failed to provide information on the ethnic composition of their populations, it would be very difficult to prevail upon them to supply the kind of information referred to in the proposed amendments. If the subject of discrimination on grounds of sex came up, the Committee should consider passing on the details via the liaison officer to the relevant Committee.

43. Mr. van BOVEN said that sensitivity should be shown to the recommendations that had come out of the Fourth World Conference on Women and those made by the United Nations General Assembly. Although it was true that

other bodies were competent to deal with women's issues, the Committee oft had to consider problems that touched on competences that lay elsewhere, b which it could deal with from its own perspective. There had been times w problems of sex discrimination and racial discrimination had been interlin with regard to women domestic workers, for example. However, the proposed amendments before the Committee should be redrafted particularly with rega to the reference to "gender-disaggregated data".

44. Mr. ABOUL-NASR called for an explanation of the terms "gender" and "gender-based" which had become common currency in recent times. The prop amendments were unacceptable in so far as the issue had nothing to do with Convention. Article 5 of the Convention amply covered instances of racial discrimination against women.

45. Mr. de GOUTTES said that the issue was more sensitive than it first appeared and that the Committee could not disregard recommendations that h been made in Beijing and in the General Assembly. However, before the Committee proceeded further in its discussion, it would be advisable to contact CEDAW to ensure that there was no duplication in the work of the t Committees.

46. Mr. GARVALOV said that, in contacts with the Chairperson of CEDAW, he assured her that when considering the reports of States parties, the Commi would look at whether women belonging to ethnic groups were being discriminated against more than men. The question of racial discrimination against such women was clearly within the purview of the Committee. The te "gender-based discrimination" was not satisfactory. Nor was the term "gender-inclusive or neutral language". However, that aside, it was surprising how many States parties spoke only of "he" or "his" in their reports, which was a practice that should be discouraged.

47. Mr. AHMADU said that the proposed amendments, if adopted, would not b clearly understood by persons responsible for drafting country reports. Th Committee often chided delegations for not fully complying with reporting guidelines. Those guidelines were already onerous and to ask more of State parties was not practical. Furthermore, the question of racial discrimina against women was already covered in the Convention and the existing guidelines. As for the use of "he" and "his", he took it that any such reference also covered "she" and "her".

48. Mr. SHAHI said that the Convention comprehensively covered racial discrimination against both men and women. The proposed amendments did not make clear what was being required of reporting States.

49. Mrs. SADIQ ALI said that the proposed amendments to the guidelines we superfluous.

50. The CHAIRMAN suggested that, even though there was no consensus among members of the Committee, some reference to the debate should be included i the report to the General Assembly. The Committee might say that it had discussed the proposal that it should amend its guidelines but had decided to adopt it, while at the same time acknowledging that, since a large major

of its membership was male, it might at times adopt a male perspective when considering certain issues, and that it would try to avoid any male bias in future.

51. Mr. VALENCIA RODRIGUEZ said that the proposed amendments would complicate the reporting obligation for States parties, particularly if they had to refer to the gender implications of racial discrimination with respect to each of the articles of the Convention. Only the first two points of the proposed text to be submitted to the General Assembly were acceptable.

52. Mr. GARVALOV suggested that the language used should not be so blunt. If the Committee had to draft a text for submission to the General Assembly, it should mention that the Committee had always been conscious of the need to ask States parties if women of different ethnic origins were particularly affected by racial discrimination.

53. Mr. van BOVEN said that members were clearly divided on the question of amendments to the general guidelines. The Committee's report should simply reflect the lack of consensus and avoid comments that covered the opinions of some members and not others.

54. Mr. WOLFRUM said that he disagreed with the suggestion made by Mr. van Boven. The general guidelines dealt adequately with the question of racial discrimination against women in so far as the "equal enjoyment of human rights" and "equality" before the law, referred to the situation of men and women. That should be reflected in any report on the discussion, which should also make it clear that, wherever racial discrimination seemed to be particularly relevant to women, members of the Committee did not fail to broach the subject.

55. Mr. ABOUL-NASR said that, as members clearly disagreed, the discussion should simply be reflected in the summary records.

56. The CHAIRMAN pointed out that the Committee owed it to those who had asked it to consider the matter to make some response, however brief. The issue was one which had been discussed by the meeting of persons chairing the human rights treaty bodies and reflected in a General Assembly resolution.

Overview of present methods of work of the Committee

57. The CHAIRMAN drew the Committee's attention to a proposed text drafted by the secretariat in consultation with the Chairman and Rapporteur. The secretariat's suggestion that the text be included as Chapter III of the Committee's report to the General Assembly for 1996 would be inconsistent with a previous decision by the Committee to put the more newsworthy items such as prevention and current issues at the beginning of the report and to relegate to the end of the list of chapters items of a more routine nature such as the submission of reports. Other human rights bodies already included such texts in their reports.

58. Mr. ABOUL-NASR asked whether the text dealt with the question of the non-self-governing territories, which should take pride of place in any overview of the Committee's work.

59. Mr. HUSBANDS (Secretary of the Committee) said that the question of non-self-governing territories had not been included because it was covered a separate chapter of the annual report.

60. Mr. WOLFRUM said the text should highlight the problems which the Committee encountered in performing its tasks under article 15, and should also refer to the importance attached by the Committee to engaging in a dialogue with States parties. The reference to the list of questions in th last sentence of paragraph 10 of the text, on the other hand, was not entir accurate and should be deleted, while paragraph 11 would have to be modifie to reflect changes already agreed.

61. Mr. SHAHI said that generally speaking, paragraph 3 should reflect t Committee's discussion of the gender issue, and an appropriate place should found for a clear reference to the early warning and urgent procedures.

62. Following a brief discussion in which Mr. RECHETOV, Mr. CHIGOVERA and Mr. de GOUTTES took part, Mr. YUTZIS proposed that, to save time, members w specific suggestions to make should submit them in writing to the secretari so that they could be included in the text for discussion later in the session.

63. It was so agreed.

The meeting rose at 1 p.m.